

(1) A description of the implementation during the preceding fiscal year of the current biennial plan under section 6302 of this title.

(2) Recommendations for the improvement or more effective administration of the outreach activities of the Department.

(Added Pub. L. 109-233, title IV, § 402(a), June 15, 2006, 120 Stat. 410.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7726 of this title prior to repeal by Pub. L. 109-233.

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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AMENDMENTS

2010—Pub. L. 111-163, title III, § 302(b), May 5, 2010, 124 Stat. 1149, added item for chapter 75.

2006—Pub. L. 109-461, title IX, § 903(a)(2), Dec. 22, 2006, 120 Stat. 3464, added item for chapter 79.

1998—Pub. L. 105-368, title V, § 512(a)(4)(B), Nov. 11, 1998, 112 Stat. 3341, substituted "Appeals for Veterans Claims" for "Veterans Appeals" in item for chapter 72.

1991—Pub. L. 102-83, § 2(d)(3), Aug. 6, 1991, 105 Stat. 402, added item for chapter 77.

Pub. L. 102-54, § 14(e)(1), June 13, 1991, 105 Stat. 287, inserted "United States" before "Court of Veterans Appeals" in item for chapter 72.

Pub. L. 102-40, title IV, §§ 402(c)(2), 403(e)(1), (f)(2), May 7, 1991, 105 Stat. 239-241, substituted "BOARDS, ADMINISTRATIONS, AND SERVICES" for "BOARDS AND DEPARTMENTS" in part heading, renumbered section numbers by substituting "7101" for "4001" in item for chapter 71, "7251" for "4051" in item for chapter 72, and "7601" for "4301" in item for chapter 76, substituted "Veterans Health Administration—Organization and Functions" for "Department of Medicine and Surgery" and "7301" for "4101" in item for chapter 73, added item for chapter 74, struck out item for chapter 75 "Veterans' Canteen Service", and added item for chapter 78.

1988—Pub. L. 100-687, div. A, title III, § 301(b), Nov. 18, 1988, 102 Stat. 4121, added item for chapter 72.

Pub. L. 100-322, title II, § 216(e)(2), May 20, 1988, 102 Stat. 530, added item for chapter 76.

CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.	
7101.	Composition of Board of Veterans' Appeals.
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7106.	Administrative appeals.
7107.	Appeals: dockets; hearings.
7108.	Rejection of applications.
7109.	Independent medical opinions.
[7110.]	Repealed.]
7111.	Revision of decisions on grounds of clear and unmistakable error.
7112.	Expedited treatment of remanded claims.

AMENDMENTS

2003—Pub. L. 108-183, title VII, § 707(b)(2), Dec. 16, 2003, 117 Stat. 2673, added item 7112.

1997—Pub. L. 105-111, § 1(b)(2), Nov. 21, 1997, 111 Stat. 2272, added item 7111.

1994—Pub. L. 103-446, title II, § 201(a)(2), Nov. 2, 1994, 108 Stat. 4656, added item 7101A.

Pub. L. 103-271, §§ 6(b), 7(a)(2), (b)(3), July 1, 1994, 108 Stat. 742, 743, substituted "Reconsideration; correction of obvious errors" for "Determinations by the Board" in item 7103, substituted "Appeals: dockets; hearings" for "Docketing of appeals" in item 7107, and struck out item 7110 "Traveling sections".

1991—Pub. L. 102-40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4001 to 4010 as 7101 to 7110, respectively.

1988—Pub. L. 100-687, div. A, title II, § 207(b), Nov. 18, 1988, 102 Stat. 4112, added item 4010.

1962—Pub. L. 87-671, § 3, Sept. 19, 1962, 76 Stat. 557, added item 4009.

Pub. L. 87-666, § 2, Sept. 19, 1962, 76 Stat. 554, added item 4005A, and substituted "Filing of notice of disagreement and appeal" for "Applications for review on appeal" in item 4005, "Administrative appeals" for "Docketing of appeals" in item 4006, and "Docketing of appeals" for "Simultaneously contested claims" in item 4007.

§ 7101. Composition of Board of Veterans' Appeals

(a) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter referred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Appeals for Veterans Claims.

(2) The Chairman may be removed by the President for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties. The Chairman may not be removed from office by the President on any other grounds. Any such removal

may only be made after notice and opportunity for hearing.

(3) The Chairman may be appointed under this subsection to more than one term. If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired.

(4) The Secretary shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the Secretary.

(c)(1)(A) The Chairman may from time to time designate one or more employees of the Department to serve as acting members of the Board. Except as provided in subparagraph (B), any such designation shall be for a period not to exceed 90 days, as determined by the Chairman.

(B) An individual designated as an acting member of the Board may continue to serve as an acting member of the Board in the making of any determination on a proceeding for which the individual was designated as an acting member of the Board, notwithstanding the termination of the period of designation of the individual as an acting member of the Board under subparagraph (A) or (C).

(C) An individual may not serve as an acting member of the Board for more than 270 days during any one-year period.

(D) At no time may the number of acting members exceed 20 percent of the total of the number of Board members and acting Board members combined.

(2) In each annual report to the Congress under section 529 of this title, the Secretary shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Secretary shall indicate, in terms of full-time employee equivalents, the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.

(d)(1) After the end of each fiscal year, the Chairman shall prepare a report on the activities of the Board during that fiscal year and the projected activities of the Board for the fiscal year during which the report is prepared and the next fiscal year. Such report shall be included in the documents providing detailed information on the budget for the Department that the Secretary submits to the Congress in conjunction with the President's budget submission for any fiscal year pursuant to section 1105 of title 31.

(2) Each such report shall include, with respect to the preceding fiscal year, information specifying—

(A) the number of cases appealed to the Board during that year;

(B) the number of cases pending before the Board at the beginning and at the end of that year;

(C) the number of such cases which were filed during each of the 36 months preceding the current fiscal year;

(D) the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year;

(E) the number of members of the Board at the end of the year and the number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of the preceding fiscal year; and

(F) the number of employees of the Department designated under subsection (c)(1) to serve as acting members of the Board during that year and the number of cases in which each such member participated during that year.

(3) The projections in each such report for the current fiscal year and for the next fiscal year shall include (for each such year)—

(A) an estimate of the number of cases to be appealed to the Board; and

(B) an evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by section 7101(a) of this title.

(e) A performance incentive that is authorized by law for officers and employees of the Federal Government may be awarded to a member of the Board (including an acting member) by reason of that member's service on the Board only if the Chairman of the Board determines that such member should be awarded that incentive. A determination by the Chairman for such purpose shall be made taking into consideration the quality of performance of the Board member.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, §4001; Pub. L. 98-223, title II, §208(a)-(c), Mar. 2, 1984, 98 Stat. 43, 44; Pub. L. 100-687, div. A, title II, §§201(a), 202(b), 208, 209, Nov. 18, 1988, 102 Stat. 4109, 4110, 4112; renumbered §7101 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§2(c)(3), 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 402, 404, 405; Pub. L. 103-271, §§2-5, July 1, 1994, 108 Stat. 740, 741; Pub. L. 103-446, title II, §§201(d), 203, Nov. 2, 1994, 108 Stat. 4657; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

1998—Subsec. (b)(1). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1994—Subsec. (a). Pub. L. 103-271, §2, struck out “(not more than 65)” after “such number”.

Subsec. (b). Pub. L. 103-446, §201(d)(1), (2), designated as par. (2) the text in par. (1) beginning “The Chairman may be removed” and struck out former par. (2) which read as follows:

“(2)(A) The other members of the Board (including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman. Each such member shall be appointed for a term of nine years.

“(B) A member of the Board (other than the Chairman) may be removed by the Secretary upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this paragraph shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title.”

Subsec. (b)(1). Pub. L. 103-271, § 3, inserted after first sentence “The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Veterans Appeals.”

Subsec. (b)(3). Pub. L. 103-446, §§ 201(d)(3), 203, substituted “The Chairman” for “Members (including the Chairman)” and inserted at end “If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired.”

Subsec. (c)(1). Pub. L. 103-271, § 4(a)(1), added par. (1) and struck out former par. (1) which read as follows: “Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the Department to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month period.”

Subsec. (c)(2), (3). Pub. L. 103-271, § 4(a)(2)–(4), redesignated par. (3) as (2), substituted “the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.” for “the number of temporary Board members designated under this subsection and the number of acting Board members designated under section 7102(a)(2)(A)(ii) of this title during the year for which the report is made.”, and struck out former par. (2) which read as follows: “Designation under paragraph (1) of this subsection of an individual as a temporary member of the Board may not be made when there are fewer than 65 members of the Board.”

Subsec. (d)(2)(F). Pub. L. 103-271, § 5, added subpar. (F).

Subsec. (d)(3)(B). Pub. L. 103-271, § 4(b)(2), substituted “section 7101(a)” for “section 7103(d)”.

Subsec. (e). Pub. L. 103-271, § 4(b)(1), substituted “an acting member” for “a temporary or acting member”. 1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4001 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “There is” for “There shall be” and “. The Board is under the administrative” for “under the administrative”.

Subsec. (b)(2), (4). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (c)(1). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (c)(3). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, § 2(c)(3), substituted “section 529” for “section 214”.

Pub. L. 102-40, § 402(d)(1), substituted “7102(a)(2)(A)(ii)” for “4002(a)(2)(A)(ii)”.

Subsec. (d)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (d)(3)(B). Pub. L. 102-40, § 402(d)(1), substituted “7103(d)” for “4003(d)”.

1988—Subsec. (a). Pub. L. 100-687, § 202(b), inserted “and” after “Vice Chairman,” substituted “necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have” for “necessary, and”, and inserted provisions which required that Board have sufficient personnel to conduct hearings and consider and dispose of appeals.

Subsec. (b). Pub. L. 100-687, § 201(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President.”

Subsec. (d). Pub. L. 100-687, § 208, added subsec. (d).

Subsec. (e). Pub. L. 100-687, § 209, added subsec. (e).

1984—Subsec. (a). Pub. L. 98-223, § 208(a), (c), substituted “65” for “fifty” and struck out “associate” before “members”.

Subsec. (c). Pub. L. 98-223, § 208(b), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 201(a) of Pub. L. 100-687 effective Feb. 1, 1989, amendment by section 202(b) of Pub. L. 100-687 effective Jan. 1, 1989, and amendment by sections 208 and 209 of Pub. L. 100-687 effective Nov. 18, 1988, see section 401(b)–(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

BOARD OF VETERANS’ APPEALS

Section 201(c), (d) of Pub. L. 100-687 provided that:

“(c) TRANSITION TO NEW BOARD.—(1) Appointments of members of the Board of Veterans’ Appeals under subsection (b)(2) of section 4001 [now 7101] of title 38, United States Code (as amended by subsection (a)), may not be made until a Chairman is appointed under subsection (b)(1) of that section.

“(2) An individual who is serving as a member of the Board on the date of the enactment of this Act [Nov. 18, 1988] may continue to serve as a member until the earlier of—

“(A) the date on which the individual’s successor (as designated by the Administrator) is appointed under subsection (b)(2) of that section, or

“(B) the end of the 180-day period beginning on the day after the date on which the Chairman is appointed under subsection (b)(1) of such section.

“(d) INITIAL TERMS OF OFFICE.—Notwithstanding the second sentence of section 4001(b)(2) [now 7101(b)(2)] of title 38, United States Code (as amended by subsection (a)), specifying the term for which members of the Board of Veterans’ Appeals shall be appointed, of the members first appointed under that section—

“(A) 22 shall be appointed for a term of three years;

“(B) 22 shall be appointed for a term of six years;

and

“(C) 22 shall be appointed for a term of nine years, as determined by the Administrator [now Secretary] at the time of the initial appointments.”

§ 7101A. Members of Board: appointment; pay; performance review

(a)(1) The members of the Board of Veterans’ Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) Each member of the Board shall be a member in good standing of the bar of a State.

(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

(c)(1)(A) The Chairman shall establish a panel to review the performance of members of the Board. The panel shall be comprised of the Chairman and two other members of the Board (other than the Vice Chairman). The Chairman shall periodically rotate membership on the panel so as to ensure that each member of the Board (other than the Vice Chairman) serves as a member of the panel for and within a reasonable period.

(B) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the performance review panel shall determine, with respect to each member of the Board (other than the Chairman or a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

(2) If the determination of the performance review panel in any case is that the member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the Chairman shall recertify the member's appointment as a member of the Board.

(3) If the determination of the performance review panel in any case is that the member's job performance does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall, based upon the individual circumstances, either—

(A) grant the member a conditional recertification; or

(B) recommend to the Secretary that the member be noncertified.

(4) In the case of a member of the Board who is granted a conditional recertification under paragraph (3)(A) or (5)(A), the performance review panel shall review the member's job performance record and make a further determination under paragraph (1) concerning that member not later than one year after the date of the conditional recertification. If the determination of the performance review panel at that time is that the member's job performance as a member of the Board still does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall recommend to the Secretary that the member be noncertified.

(5) In a case in which the Chairman recommends to the Secretary under paragraph (3) or (4) that a member be noncertified, the Secretary, after considering the recommendation of the Chairman, may either—

(A) grant the member a conditional recertification; or

(B) determine that the member should be noncertified.

(d)(1) If the Secretary, based upon the recommendation of the Chairman, determines that a member of the Board should be noncertified, that member's appointment as a member of the Board shall be terminated and that member shall be removed from the Board.

(2)(A) Upon removal from the Board under paragraph (1) of a member of the Board who before appointment to the Board served as an attorney in the civil service, the Secretary shall appoint that member to an attorney position at the Board, if the removed member so requests. If the removed member served in an attorney position at the Board immediately before appointment to the Board, appointment to an attorney position under this paragraph shall be in the grade and step held by the removed member immediately before such appointment to the Board.

(B) The Secretary is not required to make an appointment to an attorney position under this paragraph if the Secretary determines that the member of the Board removed under paragraph (1) is not qualified for the position.

(e)(1) A member of the Board (other than the Chairman or a member of the Senior Executive Service) may be removed as a member of the Board by reason of job performance only as provided in subsections (c) and (d). Such a member may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than the Chairman or a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.

(Added Pub. L. 103-446, title II, §201(a)(1), Nov. 2, 1994, 108 Stat. 4655; amended Pub. L. 105-368, title X, §1002, Nov. 11, 1998, 112 Stat. 3363.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368, §1002(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2). Pub. L. 105-368, §1002(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon removal from the Board under paragraph (1), a member of the Board (other than the Chairman) who was a career or career-conditional employee in the civil service before commencement of service as a member of the Board shall revert to the civil service grade and series held by the member immediately before the appointment of the member to the Board."

EFFECTIVE DATE

Section 201(c) of Pub. L. 103-446 provided that: "Section 7101A(b) of title 38, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning after December 31, 1994."

SAVE PAY PROVISION

Section 201(b) of Pub. L. 103-446 provided that: "The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act [Nov. 2, 1994] may not be reduced by reason of the amendments made by this section [enacting this section and amending section 7101 of this title] to a rate below the rate payable to such individual on the day before such date."

DEADLINE FOR ESTABLISHMENT OF PERFORMANCE
EVALUATION CRITERIA FOR BOARD MEMBERS

Section 202 of Pub. L. 103-446 provided that:

"(a) DEADLINE.—The job performance standards required to be established by section 7101A(f) of title 38, United States Code, as added by section 201(a), shall be established not later than 90 days after the date of the enactment of this Act [Nov. 2, 1994].

"(b) SUBMISSION TO CONGRESSIONAL COMMITTEES.—Not later than the date on which the standards referred to in subsection (a) take effect, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing the standards established by the Chairman of the Board of Veterans' Appeals."

§ 7102. Assignment of members of Board

(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4002; Pub. L. 98-223, title II, §208(c), (d), Mar. 2, 1984, 98 Stat. 44; renumbered §7102 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103-271, §6(a), July 1, 1994, 108 Stat. 741.)

AMENDMENTS

1994—Pub. L. 103-271 amended section generally, substituting present provisions for provisions authorizing Chairman to divide Board into sections of three members and to assign proceedings thereto, and provisions relating to assignment where section is composed of fewer than three members, limiting annual period of service, prohibiting more than one member to be a temporary or acting member, and relating to hearing docket and report of determination.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4002 of this title as this section.

Subsec. (a)(2)(A)(ii). Pub. L. 102-83 substituted "Department" for "Veterans' Administration".

Subsec. (a)(3). Pub. L. 102-40, §402(d)(1), substituted "7101(c)" for "4001(c)".

1984—Subsec. (a)(1). Pub. L. 98-223, §208(d)(1), designated provision authorizing the Chairman from time

to time to divide the Board into sections of three members, assign members to the Board thereto, and designated the chief thereof, as par. (1).

Subsec. (a)(2). Pub. L. 98-223, §208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98-223, §208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98-223, §208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98-223, §208(c), struck out "associate" before "member" in two places.

Subsec. (c). Pub. L. 98-223, §208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

§ 7103. Reconsideration; correction of obvious errors

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally heard by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally heard by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4003; Pub. L. 100-687, div. A, title II, §202(a), Nov. 18, 1988, 102 Stat. 4110; renumbered §7103, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, §6(a), July 1, 1994, 108 Stat. 741.)

AMENDMENTS

1994—Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows:

"(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.

“(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.

“(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record.”

1991—Pub. L. 102-40 renumbered section 4003 of this title as this section.

1988—Pub. L. 100-687, in amending section generally, added subsec. (a), struck out former subsec. (a) which provided that determination of section, when unanimous, be final determination of Board, added subsec. (b), struck out former subsec. (b) which provided that when there is disagreement among members of section, concurrence of Chairman with majority of members of section shall constitute final determination of Board, and added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

§ 7104. Jurisdiction of the Board

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall—

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4004; Pub. L. 87-97, §1, July 20, 1961, 75 Stat. 215; Pub.

L. 100-687, div. A, title I, §101(b), title II, §§203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered §7104 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 103-271, §§7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104-275, title V, §509, Oct. 9, 1996, 110 Stat. 3344.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-275 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).”

1994—Subsec. (a). Pub. L. 103-271, §8, substituted “511(a)” for “211(a)”.

Pub. L. 103-271, §7(b)(1), struck out after second sentence “The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4004 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-54 made a technical correction to Pub. L. 100-687, §101(b). See 1988 Amendment note below.

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted “5108” for “3008”.

Subsec. (c). Pub. L. 102-83, §4(c), substituted “chief legal officer of the Department” for “chief law officer”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

1988—Subsec. (a). Pub. L. 100-687, §101(b), as amended by Pub. L. 102-54, substituted “All questions in a matter which under section 211(a) of this title is subject to decision by the Administrator” for “All questions on claims involving benefits under the laws administered by the Veterans' Administration”.

Pub. L. 100-687, §203(a), inserted at end “The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.”

Subsec. (b). Pub. L. 100-687, §204, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “When a claim is disallowed by the Board, it may not thereafter be reopened and allowed, and no claim based upon the same factual basis shall be considered; however, where subsequent to disallowance of a claim, new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision.”

Subsecs. (d), (e). Pub. L. 100-687, §205, added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: “The decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated.”

1961—Subsec. (d). Pub. L. 87-97 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 14(g)(2) of Pub. L. 102-54 provided that the amendment made by that section is effective Nov. 18, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 101(b) and 204 of Pub. L. 100-687 effective Sept. 1, 1989, and amendment by sec-

tions 203(a) and 205 of Pub. L. 100-687 effective Jan. 1, 1989, see section 401(a), (d) of Pub. L. 100-687, as amended, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87-97 provided that: "The amendment made by this Act [amending this section] shall take effect as of January 1, 1962."

§ 7105. Filing of notice of disagreement and appeal

(a) Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereinafter referred to as the "agency of original jurisdiction"). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

(2) Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.

(d)(1) Where the claimant, or the claimant's representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either by granting the benefit sought or through withdrawal of the notice of disagreement, such agency shall prepare a statement of the case. A statement of the case shall include the following:

(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed.

(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.

(C) The decision on each issue and a summary of the reasons for such decision.

(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 5701 of this title or other-

wise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to the claimant's representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans' Appeals.

(4) The claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to which the claimant does not specifically express agreement.

(5) The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 553, §4005; amended Pub. L. 99-576, title VII, §701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title II, §§203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered §7105 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Subsec. (b)(1). Pub. L. 107-14 substituted "hereinafter" for "hereafter".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4005 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator".

Subsec. (d)(2). Pub. L. 102-40, §402(d)(1), substituted "5701" for "3301".

1988—Subsec. (d)(1). Pub. L. 100-687, §206(a), substituted "shall prepare a statement of the case. A statement of the case shall include the following:" for "will prepare a statement of the case consisting of—", added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

"(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;

"(B) A citation or discussion of the pertinent law, regulations, and, where applicable, the provisions of the Schedule for Rating Disabilities;

"(C) The decision on such issue or issues and a summary of the reasons therefor."

Subsec. (d)(4). Pub. L. 100-687, §206(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken."

Subsec. (d)(5). Pub. L. 100-687, §203(b), struck out "will base its decision on the entire record and" after "of Veterans' Appeals".

1986—Subsec. (b)(2). Pub. L. 99-576, §701(85), substituted “the claimant’s” for “his” and “the claimant or legal guardian” for “him”.

Subsec. (d)(1), (3). Pub. L. 99-576, §701(85)(A), substituted “the claimant’s” for “his”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687 set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 87-666 provided that: “The amendments made by this Act [enacting sections 4005, 4005A, and 4006 [now 7105, 7105A, and 7106] of this title, redesignating former section 4006 as 4007 [now 7107] of this title, and repealing former sections 4005 and 4007 of this title] shall be effective January 1, 1963.”

§ 7105A. Simultaneously contested claims

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 554, §4005A; renumbered §7105A and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4007 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4005A of this title as this section and substituted “7105” for “4005” in subsec. (b).

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 3 of Pub. L. 87-666, set out as a note under section 7105 of this title.

§ 7106. Administrative appeals

Application for review on appeal may be made within the one-year period prescribed in section

7105 of this title by such officials of the Department as may be designated by the Secretary. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 554, §4006; renumbered §7106 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (c)(2) of former section 4005 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4006 of this title as this section and substituted “7105” for “4005”.

Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Department” for “Veterans’ Administration”.

§ 7107. Appeals: dockets; hearings

(a)(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(3) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

(d)(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.

(3) A hearing to be held within an area served by a regional office of the Department may, for

cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

- (A) if the case involves interpretation of law of general application affecting other claims;
- (B) if the appellant is seriously ill or is under severe financial hardship; or
- (C) for other sufficient cause shown.

(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.

(f) Nothing in this section shall preclude the screening of cases for purposes of—

- (1) determining the adequacy of the record for decisional purposes; or
- (2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1242, § 4006; renumbered § 4007, Pub. L. 87-666, § 1, Sept. 19, 1962, 76 Stat. 553; renumbered § 7107, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, § 7(a)(1), July 1, 1994, 108 Stat. 742; Pub. L. 103-446, title III, § 303, Nov. 2, 1994, 108 Stat. 4658; Pub. L. 105-368, title X, § 1003, Nov. 11, 1998, 112 Stat. 3363.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-368, § 1003(a)(1), inserted “in paragraphs (2) and (3) and” after “Except as provided”.

Subsec. (a)(2). Pub. L. 105-368, § 1003(a)(2), added second and third sentences and struck out former second sentence which read as follows: “Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.”

Subsec. (a)(3). Pub. L. 105-368, § 1003(a)(3), added par. (3).

Subsec. (d)(2). Pub. L. 105-368, § 1003(b)(1), substituted “in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.” for “in the order in which requests for hearings within that area are received by the Department.”

Subsec. (d)(3). Pub. L. 105-368, § 1003(b)(2), added par. (3) and struck out former par. (3) which read as follows: “In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hard-

ship, a hearing may be scheduled at a time earlier than would be provided for under paragraph (2).”

1994—Pub. L. 103-446 substituted “Except as provided in subsection (f), each case” for “Each case” in subsec. (a)(1) and added subsec. (f).

Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows: “All cases received pursuant to application for review on appeal shall be considered and decided in regular order according to their places upon the docket; however, for cause shown a case may be advanced on motion for earlier consideration and determination. Every such motion shall set forth succinctly the grounds upon which it is based. No such motion shall be granted except in cases involving interpretation of law of general application affecting other claims, or for other sufficient cause shown.”

1991—Pub. L. 102-40 renumbered section 4007 of this title as this section.

1962—Pub. L. 87-666 renumbered section 4006 of this title as this section.

§ 7108. Rejection of applications

An application for review on appeal shall not be entertained unless it is in conformity with this chapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1243, § 4008; renumbered § 7108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4008 of this title as this section.

§ 7109. Independent medical opinions

(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.

(Added Pub. L. 87-671, § 1, Sept. 19, 1962, 76 Stat. 557, § 4009; amended Pub. L. 100-687, div. A, title I, § 103(b), Nov. 18, 1988, 102 Stat. 4107; renumbered § 7109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4009 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” in two places.

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

1988—Subsec. (a). Pub. L. 100-687, § 103(b)(1), substituted “Board may” for “Board is authorized to”.

Subsec. (b). Pub. L. 100-687, §103(b)(2), substituted "Any such arrangement shall" for "Such arrangement will", and "an individual case shall" for "any individual case will".

Subsec. (c). Pub. L. 100-687, §103(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 4 of Pub. L. 87-671, set out as an Effective Date of 1962 Amendment note under section 5701 of this title.

[§ 7110. Repealed. Pub. L. 103-271, § 7(b)(2), July 1, 1994, 108 Stat. 743]

Section, added Pub. L. 100-687, div. A, title II, §207(a), Nov. 18, 1988, 102 Stat. 4111, §4010; renumbered §7110, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, authorized hearing before traveling sections of the Board.

§ 7111. Revision of decisions on grounds of clear and unmistakable error

(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section.

(Added Pub. L. 105-111, §1(b)(1), Nov. 21, 1997, 111 Stat. 2271.)

EFFECTIVE DATE

Section applicable to any determination made before, on, or after Nov. 21, 1997, see section 1(c)(1) of Pub. L. 105-111, set out as a note under section 5109A of this title.

§ 7112. Expedited treatment of remanded claims

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is re-

manded to the Secretary by the Court of Appeals for Veterans Claims.

(Added Pub. L. 108-183, title VII, §707(b)(1), Dec. 16, 2003, 117 Stat. 2673.)

CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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AMENDMENTS

2008—Pub. L. 110-389, title VI, §604(b), Oct. 10, 2008, 122 Stat. 4179, added item 7288.

2001—Pub. L. 107-103, title VI, §§604(c)(2), 605(b), Dec. 27, 2001, 115 Stat. 1000, substituted "Practice and registration fees" for "Practice fee" in item 7285 and added item 7287.

1999—Pub. L. 106-117, title X, §§1021(b), 1024(b), Nov. 30, 1999, 113 Stat. 1592, 1594, added items 7257 and 7299.

1998—Pub. L. 105-368, title V, §512(a)(3), (4)(A), Nov. 11, 1998, 112 Stat. 3341, substituted "APPEALS FOR VETERANS CLAIMS" for "VETERANS APPEALS" in chapter heading, struck out "of Veterans Appeals" after "Court" in item 7286, substituted "Court decision" for "United States Court of Veterans Appeals decision" in item 7291, and struck out "Court of Veterans Appeals" before "Retirement Fund" in item 7298.

1991—Pub. L. 102-82, §2(b), Aug. 6, 1991, 105 Stat. 375, added item 7286.

Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4051 to 4098 as 7251 to 7298, respectively.

1989—Pub. L. 101-94, title I, §101(b), Aug. 16, 1989, 103 Stat. 625, added subchapter V heading and items 4096 to 4098.

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

§ 7251. Status

There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the United States Court of Appeals for Veterans Claims.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4113, §4051; renumbered §7251, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §511(b), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4051 of this title as this section.

CHANGE OF NAME

Pub. L. 105-368, title V, §511(a), Nov. 11, 1998, 112 Stat. 3341, provided that: “The United States Court of Veterans Appeals is hereby renamed as, and shall hereafter be known and designated as, the United States Court of Appeals for Veterans Claims.”

Pub. L. 105-368, title V, §512(c), Nov. 11, 1998, 112 Stat. 3342, provided that: “Any reference in a law, regulation, document, paper, or other record of the United States to the United States Court of Veterans Appeals shall be deemed to be a reference to the United States Court of Appeals for Veterans Claims.”

EFFECTIVE DATE OF 2001 AMENDMENT; CONSTRUCTION

Pub. L. 107-103, title VI, §603(c), (d), Dec. 27, 2001, 115 Stat. 999, provided that:

“(c) CONSTRUCTION.—The repeal in subsection (a) [repealing section 402 of Pub. L. 100-687, formerly set out as a note below] may not be construed to confer upon the United States Court of Appeals for Veterans Claims jurisdiction over any appeal or other matter not within the jurisdiction of the Court as provided in section 7266(a) of title 38, United States Code.

“(d) APPLICABILITY.—The repeals made by subsections (a) and (b) [repealing section 402 of Pub. L. 100-687, formerly set out as a note below, and section 403 of Pub. L. 100-687, formerly set out as a note under section 5904 of this title] shall apply to any appeal filed with the United States Court of Appeals for Veterans Claims—

“(1) on or after the date of the enactment of this Act [Dec. 27, 2001]; or

“(2) before the date of the enactment of this Act but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-368, title V, §513, Nov. 11, 1998, 112 Stat. 3342, provided that: “This subtitle [subtitle B (§§511-513) of title V of Pub. L. 105-368, see Tables for classification], and the amendments made by this subtitle, shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 11, 1998].”

EFFECTIVE DATE

Section 401 of Pub. L. 100-687, as amended by Pub. L. 101-94, title III, §301, Aug. 16, 1989, 103 Stat. 628, provided that:

“(a) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, this division (and the amendments made by this Act) [div. A (§§1-403) of Pub. L. 100-687, known as the ‘Veterans’ Judicial Review Act’, see Tables for classification] shall take effect on September 1, 1989.

“(b) EFFECTIVE DATE FOR CERTAIN TRANSITION PROVISIONS.—The amendment made by section 201(a) [amend-

ing section 4001 [now 7101] of this title] shall take effect on February 1, 1989.

“(c) DATE OF ENACTMENT.—Sections 201 (other than subsection (a)), 208, 209, 302, and 303, and the amendments made by those sections [see Tables for classification], shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

“(d) BOARD OF VETERANS’ APPEALS.—Sections 202, 203, 205, 206, and 207 [see Tables for classification] shall take effect as of January 1, 1989. Section 204 [amending section 4004 [now 7104] of this title] shall take effect on September 1, 1989.

“(e) COMMENCEMENT OF OPERATION OF COURT OF VETERANS APPEALS.—Notwithstanding subsection (a), the United States Court of Veterans Appeals [now United States Court of Appeals for Veterans Claims] established pursuant to chapter 72 of title 38, United States Code (as added by section 301) shall not begin to operate until at least three judges have been appointed to the court.”

CHAPTER APPLICABLE TO CLAIMS ALLEGING PREVIOUS DETERMINATION THE PRODUCT OF CLEAR AND UNMISTAKABLE ERROR

Pub. L. 105-111, §1(c)(2), Nov. 21, 1997, 111 Stat. 2272, provided that: “Notwithstanding section 402 of the Veterans Judicial Review Act (38 U.S.C. 7251 note), chapter 72 of title 38, United States Code, shall apply with respect to any decision of the Board of Veterans’ Appeals on a claim alleging that a previous determination of the Board was the product of clear and unmistakable error if that claim is filed after, or was pending before the Department of Veterans Affairs, the Court of Veterans Appeals [now Court of Appeals for Veterans Claims], the Court of Appeals for the Federal Circuit, or the Supreme Court on the date of the enactment of this Act [Nov. 21, 1997].”

CHAPTER APPLICABLE TO CASES FILED ON OR AFTER NOVEMBER 18, 1998

Section 402 of Pub. L. 100-687, as amended by Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, which provided that this chapter applied to any case in which a notice of disagreement was filed under section 7105 of this title on or after Nov. 18, 1988, was repealed by Pub. L. 107-103, title VI, §603(a), Dec. 27, 2001, 115 Stat. 999.

§ 7252. Jurisdiction; finality of decisions

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4113, §4052; renumbered §7252 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4052 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "Court" for "court" in last sentence.

Subsec. (b). Pub. L. 102-83, § 5(c)(1), substituted "1155" for "355".

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-40, § 402(d)(1), substituted "7261" for "4061".

Subsec. (c). Pub. L. 102-40, § 402(d)(1), substituted "7292" for "4092".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7253. Composition

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than seven judges, one of whom shall serve as chief judge in accordance with subsection (d).

(b) APPOINTMENT.—The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) TERM OF OFFICE.—The term of office of the judges of the Court of Appeals for Veterans Claims shall be 15 years. A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.

(d) CHIEF JUDGE.—(1) The chief judge of the Court is the head of the Court. The chief judge of the Court shall be the judge of the Court in regular active service who is senior in commission among the judges of the Court who—

(A) have served for one or more years as judges of the Court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the Court in regular active service who has served as a judge of the Court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the Court shall serve as the chief judge under paragraph (1) for a term of five years or until the judge becomes age 70, whichever occurs first.

If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, that judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of the term prescribed by paragraph (3) if—

(i) the chief judge leaves regular active service as a judge of the Court; or

(ii) the chief judge notifies the other judges of the Court in writing that such judge desires to be relieved of the duties of chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform the duties of chief judge, those duties shall be performed by the judge of the Court in active service who is present, able and qualified to act, and is next in precedence.

(6) Judges who have the same seniority in commission shall be eligible for service as chief judge in accordance with their relative precedence.

(e) SALARY.—Each judge of the Court shall receive a salary at the same rate as is received by judges of the United States district courts.

(f) REMOVAL.—(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, or engaging in the practice of law. A judge of the Court may not be removed from office by the President on any other ground.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons for the removal and an opportunity to be heard.

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of chapter 16 of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such chapter.

(2) The provisions of sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to section 354(b) or 355 of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this sub-

paragraph shall be made from funds appropriated to the Court.

(h) TEMPORARY EXPANSION OF COURT.—(1) During the period from January 1, 2002, through August 15, 2005, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2)(A) Of the two additional judges authorized by this subsection—

(i) only one may be appointed pursuant to a nomination made in 2002; and

(ii) only one may be appointed pursuant to a nomination made in 2003.

(B) If a judge is not appointed under this subsection pursuant to a nomination made in 2002, a judge may be appointed under this subsection pursuant to a nomination made in 2004. If a judge is not appointed under this subsection pursuant to a nomination made in 2003, a judge may be appointed under this subsection pursuant to a nomination made in 2004. In either case, such an appointment may be made only pursuant to a nomination made before October 1, 2004.

(3) The term of office and the eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), are governed by the provisions of section 1012 of the Court of Appeals for Veterans Claims Amendments of 1999 (title X of Public Law 106-117; 113 Stat. 1590; 38 U.S.C. 7296 note) if the judge is one of the first two judges appointed to the Court after November 30, 1999.

(4) A judge of the Court as of December 27, 2001, who was appointed to the Court before January 1, 1991, may accept appointment as a judge of the Court under this subsection notwithstanding that the term of office of the judge on the Court has not yet expired under this section. The term of office of an incumbent judge who receives an appointment as described in the preceding sentence shall be 15 years, which includes any period remaining in the unexpired term of the judge. Any service following an appointment under this subsection shall be treated as though served as part of the original term of office of that judge on the Court.

(5) Notwithstanding paragraph (1), an appointment may not be made to the Court if the appointment would result in there being more than seven judges on the Court who were appointed after January 1, 1997. For the purposes of this paragraph, a judge serving in recall status under section 7257 of this title shall be disregarded in counting the number of judges appointed to the Court after such date.

(i) ADDITIONAL TEMPORARY EXPANSION OF COURT.—(1) Subject to paragraph (2), effective as of December 31, 2009, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2) Effective as of January 1, 2013, an appointment may not be made to the Court if the appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in subsection (a).

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4053; amended Pub. L. 101-94, title I, §102(c), Aug. 16, 1989, 103 Stat. 626; renumbered §7253, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L.

102-82, §3, Aug. 6, 1991, 105 Stat. 375; Pub. L. 102-585, title VIII, §801, Nov. 4, 1992, 106 Stat. 4980; Pub. L. 105-368, title V, §§501, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106-117, title X, §§1031, 1032(a), 1033, Nov. 30, 1999, 113 Stat. 1594, 1595; Pub. L. 107-103, title VI, §601, Dec. 27, 2001, 115 Stat. 998; Pub. L. 107-273, div. C, title I, §11043(f), Nov. 2, 2002, 116 Stat. 1856; Pub. L. 108-454, title VIII, §802, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 109-233, title V, §503(15), June 15, 2006, 120 Stat. 417; Pub. L. 110-389, title VI, §601, Oct. 10, 2008, 122 Stat. 4176.)

AMENDMENTS

2008—Subsec. (i). Pub. L. 110-389 added subsec. (i).

2006—Subsec. (d)(5). Pub. L. 109-233 substituted “Court” for “court”.

2004—Subsec. (d)(1). Pub. L. 108-454, §802(a), inserted “The chief judge of the Court is the head of the Court.” after “(1)”.

Subsec. (d)(4)(A). Pub. L. 108-454, §802(b), substituted “Court” for “court” in cls. (i) and (ii).

Subsec. (h)(4). Pub. L. 108-454, §802(c), substituted “December 27, 2001,” for “the date of the enactment of this subsection”.

2002—Subsec. (g)(1). Pub. L. 107-273, §11043(f)(1), substituted “chapter 16” for “section 372(c)” and “such chapter” for “such section”.

Subsec. (g)(2). Pub. L. 107-273, §11043(f)(2), substituted “sections 354(b) through 360” for “paragraphs (7) through (15) of section 372(c)” and “section 354(b) or 355” for “paragraph (7) or (8) of section 372(c)”.

Subsec. (g)(3)(B). Pub. L. 107-273, §11043(f)(3), substituted “361” for “372(c)(16)”.

2001—Subsecs. (b), (c), (f), (g). Pub. L. 107-103, §601(b), inserted subsec. headings.

Subsec. (h). Pub. L. 107-103, §601(a), added subsec. (h). 1999—Subsec. (a). Pub. L. 106-117, §1031, inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The Court of Appeals for Veterans Claims shall be composed of a chief judge and at least two and not more than six associate judges.”

Subsec. (d). Pub. L. 106-117, §1032(a), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “The chief judge is the head of the Court”.

Subsec. (e). Pub. L. 106-117, §1033, inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows:

“(e)(1) The chief judge of the Court shall receive a salary at the same rate as is received by judges of the United States Courts of Appeals.

“(2) Each judge of the Court, other than the chief judge, shall receive a salary at the same rate as is received by judges of the United States district courts.”

1998—Subsec. (a). Pub. L. 105-368, §512(a)(1), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

Subsec. (c). Pub. L. 105-368, §512(a)(1), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

Pub. L. 105-368, §501, inserted at end “A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.”

1992—Subsec. (g). Pub. L. 102-585 designated existing provisions as par. (1) and added pars. (2) and (3).

1991—Pub. L. 102-40 renumbered section 4053 of this title as this section.

Subsec. (g). Pub. L. 102-82 added subsec. (g).

1989—Subsec. (f)(1). Pub. L. 101-94 inserted “or” before “engaging” and substituted “law” for “law, or physical or mental disability which, in the opinion of the President, prevents the proper execution of the judge’s duties”.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-117, title X, §1036, Nov. 30, 1999, 113 Stat. 1595, provided that:

“(a) EFFECTIVE DATE.—The amendments made by this subtitle [subtitle C (§§1031-1036) of title X of Pub. L. 106-117, amending this section and sections 7254, 7281, 7296, and 7297 of this title] shall take effect on the date of the enactment of this Act [Nov. 30, 1999].

“(b) SAVINGS PROVISION FOR INCUMBENT CHIEF JUDGE.—The amendments made by this subtitle shall not apply while the individual who is chief judge of the Court [United States Court of Appeals for Veterans Claims] on the date of the enactment of this Act [Nov. 30, 1999] continues to serve as chief judge. If that individual, upon termination of service as chief judge, provides notice under section 7257 of title 38, United States Code, of availability for service in a recalled status, the rate of pay applicable to that individual under section 7296(c)(1)(A) of such title while serving in a recalled status shall be at the rate of pay applicable to that individual at the time of retirement, if greater than the rate otherwise applicable under that section.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1) of Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

INITIAL APPOINTMENT OF JUDGES TO COURT OF VETERANS APPEALS

Section 302 of Pub. L. 100-687 prohibited President from appointing associate judges of the United States Court of Veterans Appeals under subsec. (b) of this section, until the chief judge of such Court has been appointed and that judges could be appointed after Feb. 1, 1989.

§ 7254. Organization

(a) The Court of Appeals for Veterans Claims shall have a seal which shall be judicially noticed.

(b) The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court. Any such panel shall have not less than three judges. The Court shall establish procedures for the assignment of the judges of the Court to such panels and for the designation of the chief of each such panel.

(c)(1) A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court. A vacancy in the Court shall not impair the powers or affect the duties of the Court or of the remaining judges of the Court.

(2) A majority of the judges of a panel of the Court shall constitute a quorum for the transaction of the business of the panel. A vacancy in a panel of the Court shall not impair the powers or affect the duties of the panel or of the remaining judges of the panel.

(d) PRECEDENCE OF JUDGES.—The chief judge of the Court shall have precedence and preside at any session that the chief judge attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(e) Judges of the Court shall have the authority to administer oaths.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4054; amended Pub.

L. 101-94, title IV, §402, Aug. 16, 1989, 103 Stat. 628; Pub. L. 101-237, title VI, §602(b), Dec. 18, 1989, 103 Stat. 2095; renumbered §7254, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102-82, §8(3), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106-117, title X, §1034, Nov. 30, 1999, 113 Stat. 1595.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-117 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “In the event of a vacancy in the position of chief judge of the Court, the associate judge senior in service on the Court shall serve as acting chief judge unless the President designates one of the other associate judges to serve as acting chief judge, in which case the judge so designated shall serve as acting chief judge.”

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4054 of this title as this section.

Subsecs. (d), (e). Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40, and Pub. L. 102-82 amended section, identically, by redesignating the second subsec. (d), relating to authority to administer oaths as, (e).

1989—Subsec. (d). Pub. L. 101-237 added subsec. (d) relating to authority to administer oaths.

Pub. L. 101-94 added subsec. (d) relating to acting chief judge in event of vacancy.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7255. Offices

The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4055; renumbered §7255, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 108-454, title VIII, §801, Dec. 10, 2004, 118 Stat. 3625.)

AMENDMENTS

2004—Pub. L. 108-454 substituted “Washington, D.C., metropolitan area” for “District of Columbia”.

1998—Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4055 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

FACILITIES FOR COURT OF APPEALS FOR VETERANS
CLAIMS

Pub. L. 101-94, title II, § 201, Aug. 16, 1989, 103 Stat. 626, as amended by Pub. L. 105-368, title V, § 512(c), Nov. 11, 1998, 112 Stat. 3342, provided that:

“(a) SPACE IN THE DISTRICT OF COLUMBIA.—The Administrator of General Services shall provide suitable building space in the District of Columbia for the United States Court of Appeals for Veterans Claims as the Court's principal place of business. The Administrator shall, if necessary, arrange for temporary space for the Court if permanent space is not immediately available for the Court. The Administrator shall place a high priority on the provision of such temporary and permanent space for the Court.

“(b) APPROVAL BY COURT.—Any space to be provided for the Court of Appeals for Veterans Claims under subsection (a) must be acceptable to the Court.

“(c) ADDITIONAL REQUIREMENT.—Any building space provided to the Court under subsection (a) shall be adjacent to additional building space (in an amount acceptable to the Court) that can be made available to the Court in the future if needed for expansion of the facilities of the Court.”

Section 303 of Pub. L. 100-687 provided for the initial location of the principal office of the Court of Veterans Appeals.

§ 7256. Times and places of sessions

The times and places of sessions of the Court of Appeals for Veterans Claims shall be prescribed by the chief judge.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4056; renumbered § 7256, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4056 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7257. Recall of retired judges

(a)(1) A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be recalled for such service, a retired judge must at the time of the judge's retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. Such a notice provided by a retired judge to whom section 7296(c)(1)(B) of this title applies is irrevocable.

(2) For the purposes of this section—

(A) a retired judge is a judge of the Court of Appeals for Veterans Claims who retires from the Court under section 7296 of this title or under chapter 83 or 84 of title 5; and

(B) a recall-eligible retired judge is a retired judge who has provided a notice under paragraph (1).

(b)(1) The chief judge may recall for further service on the Court a recall-eligible retired

judge in accordance with this section. Such a recall shall be made upon written certification by the chief judge that substantial service is expected to be performed by the retired judge for such period, not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.

(2) A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge's consent.

(3) If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the status of a recall-eligible judge. This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.

(4) A recall-eligible retired judge who becomes permanently disabled and as a result of that disability is unable to perform further service on the Court shall be removed from the status of a recall-eligible judge. Determination of such a disability shall be made pursuant to section 7253(g) or 7296(g) of this title.

(c) A retired judge who is recalled under this section may exercise all of the judicial powers and duties of the office of a judge in active service.

(d)(1) The pay of a recall-eligible retired judge to whom section 7296(c)(1)(B) of this title applies is the pay specified in that section.

(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 or to whom section 7296(c)(1)(A) of this title applies shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5 or the judge's annuity under section 7296(c)(1)(A) of this title, whichever is applicable.

(e)(1) Except as provided in subsection (d), a judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be considered to be a reemployed annuitant under that chapter.

(2) Nothing in this section affects the right of a judge who retired under chapter 83 or 84 of title 5 to serve as a reemployed annuitant in accordance with the provisions of title 5.

(Added Pub. L. 106-117, title X, § 1021(a), Nov. 30, 1999, 113 Stat. 1590; amended Pub. L. 110-389, title VI, § 603(a), (b)(3)–(c), Oct. 10, 2008, 122 Stat. 4177, 4178.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-389, § 603(b)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: “Such a notice provided by a retired judge is irrevocable.”

Subsec. (b)(2). Pub. L. 110-389, § 603(a), struck out “or for more than a total of 180 days (or the equivalent) during any calendar year” before period at end.

Subsec. (b)(3). Pub. L. 110-389, §603(c), inserted at end “This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.”

Subsec. (d). Pub. L. 110-389, §603(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(d)(1) The pay of a recall-eligible retired judge who retired under section 7296 of this title is specified in subsection (c) of that section.

“(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge’s annuity under the applicable provisions of chapter 83 or 84 of title 5.”

SUBCHAPTER II—PROCEDURE

§ 7261. Scope of review

(a) In any action brought under this chapter, the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans’ Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact adverse to the claimant made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans’ Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary’s application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans’ Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans’ Appeals is adverse to a party and the sole stated basis for such decision is the failure of

the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4061; amended Pub. L. 101-237, title VI, §602(c), Dec. 18, 1989, 103 Stat. 2095; renumbered §7261, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-330, title IV, §401(a), (b), Dec. 6, 2002, 116 Stat. 2832.)

AMENDMENTS

2002—Subsec. (a)(4). Pub. L. 107-330, §401(a), inserted “adverse to the claimant” after “material fact” and “or reverse” after “and set aside”.

Subsec. (b). Pub. L. 107-330, §401(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In making the determinations under subsection (a) of this section, the Court shall take due account of the rule of prejudicial error.”

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” in introductory provisions.

1991—Pub. L. 102-40 renumbered section 4061 of this title as this section.

Subsec. (a)(1) to (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (a)(4). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Court” for “court”.

Subsec. (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

1989—Subsec. (a)(2). Pub. L. 101-237 inserted “or unreasonably delayed” after “withheld”.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-330, title IV, §401(c), Dec. 6, 2002, 116 Stat. 2832, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 6, 2002].

“(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7262. Fee for filing appeals

(a) The Court of Appeals for Veterans Claims may impose a fee of not more than \$50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will

impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

(b) The Court may from time to time adjust the maximum amount permitted for a fee imposed under subsection (a) of this section based upon inflation and similar fees charged by other courts established under Article I of the Constitution.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4062; renumbered §7262, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4062 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the Court of Appeals for Veterans Claims by the General Counsel of the Department.

(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 7264 of this title. In addition to members of the bar admitted to practice before the Court in accordance with such rules of practice, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed in such rules of practice.

(c) A person who represents an appellant before the Court shall file a copy of any fee agreement between the appellant and that person with the Court at the time the appeal is filed. The Court, on its own motion or the motion of any party, may review such a fee agreement.

(d) In reviewing a fee agreement under subsection (c) of this section or under section 5904(c)(2) of this title, the Court may affirm the finding or order of the Board and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable. An order of the Court under this subsection is final and may not be reviewed in any other court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4063; renumbered §7263 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4063 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted “7264” for “4064”.

Subsec. (d). Pub. L. 102-40, §402(d)(1), substituted “5904(c)(2)” for “3404(c)(2)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7264. Rules of practice and procedure

(a) The proceedings of the Court of Appeals for Veterans Claims shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

(b) The mailing of a pleading, decision, order, notice, or process in respect of proceedings before the Court shall be held sufficient service of such pleading, decision, order, notice, or process if it is properly addressed to the address furnished by the appellant on the notice of appeal filed under section 7266 of this title.

(c) Section 455 of title 28 shall apply to judges and proceedings of the Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4064; renumbered §7264 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-82, §4, Aug. 6, 1991, 105 Stat. 376; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4064 of this title as this section.

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted “7266” for “4066”.

Subsec. (c). Pub. L. 102-82 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

INTERIM RULES OF COURT OF VETERANS APPEALS

Pub. L. 101-94, title II, §203, Aug. 16, 1989, 103 Stat. 627, provided that the Federal Rules of Appellate Procedure (28 U.S.C. App.) would be interim rules of United States Court of Veterans Appeals unless otherwise provided by the Court in accordance with this chapter, and if there was a conflict between a provision of Federal Rules of Appellate Procedure and procedures set forth in this chapter, procedures set forth in this chapter would apply.

§ 7265. Contempt authority; assistance to the Court

(a) The Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(b) The Court shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for a district in which the Court is sitting shall, if requested by the chief judge of the Court, attend any session of the Court in that district.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4065; renumbered §7265, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4065 of this title as this section.

§ 7266. Notice of appeal

(a) In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

(b) An appellant shall file a notice of appeal under this section by delivering or mailing the notice to the Court.

(c) A notice of appeal shall be deemed to be received by the Court as follows:

(1) On the date of receipt by the Court, if the notice is delivered.

(2) On the date of the United States Postal Service postmark stamped on the cover in which the notice is posted, if the notice is properly addressed to the Court and is mailed.

(d) For a notice of appeal mailed to the Court to be deemed to be received under subsection (c)(2) on a particular date, the United States Postal Service postmark on the cover in which the notice is posted must be legible. The Court shall determine the legibility of any such postmark and the Court's determination as to legibility shall be final and not subject to review by any other Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4066; renumbered §7266 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title V, §511(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-103, title V, §507, Dec. 27, 2001, 115 Stat. 997.)

AMENDMENTS

2001—Pub. L. 107-103 struck out “(1)” before “In order to”, redesignated par. (2) of subsec. (a) as subsec. (b), redesignated par. (3) of subsec. (a) as subsec. (c) and subpars. (A) and (B) thereof as pars. (1) and (2), respectively, redesignated par. (4) of subsec. (a) as subsec. (d) and substituted “subsection (c)(2)” for “paragraph (3)(B)”, and struck out former subsec. (b) which read as follows: “The appellant shall also furnish the Secretary with a copy of such notice, but a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section.”

1998—Subsec. (a)(1). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1994—Subsec. (a). Pub. L. 103-446 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as fol-

lows: “In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4066 of this title as this section.

Subsec. (a). Pub. L. 102-40, §402(d)(1), substituted “7104(e)” for “4004(e)”.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 511(b) of Pub. L. 103-446 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 2, 1994] and shall apply to notices of appeal that are delivered or mailed to the United States Court of Veterans Appeals [now United States Court of Appeals for Veterans Claims] on or after that date.”

INTERIM PROVISION FOR FILING NOTICES OF APPEAL

Pub. L. 101-94, title II, §202, Aug. 16, 1989, 103 Stat. 626, provided that in the case of a person adversely affected by a final decision of the Board of Veterans' Appeals that was made before the date on which the United States Court of Veterans Appeals published in the Federal Register a notice by the Court that it had commenced operations, the period prescribed under this section within which a notice of appeal had to be filed with the Court was to be extended to the end of the 30-day period beginning on the date such notice was published, if the end of that period was later than the date that would otherwise be applicable under this section.

§ 7267. Decisions

(a) A decision upon a proceeding before the Court of Appeals for Veterans Claims shall be made as quickly as practicable. In a case heard by a panel of the Court, the decision shall be made by a majority vote of the panel in accordance with the rules of the Court. The decision of the judge or panel hearing the case so made shall be the decision of the Court.

(b) A judge or panel shall make a determination upon any proceeding before the Court, and any motion in connection with such a proceeding, that is assigned to the judge or panel. The judge or panel shall make a report of any such determination which constitutes the judge or panel's final disposition of the proceeding.

(c) The Court shall designate in its decision in any case those specific records of the Government on which it relied (if any) in making its decision. The Secretary shall preserve records so designated for not less than the period of time designated by the Archivist of the United States.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4117, §4067; renumbered §7267, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-82, §§1, 8(1), Aug. 6, 1991, 105 Stat. 375, 377; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4067 of this title as this section.

Subsec. (a). Pub. L. 102-82, §1(3), struck out before period at end “except as provided in subsection (d) of this section”.

Subsec. (b). Pub. L. 102-82, §1(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The Court shall include in its decision a statement of its conclusions of law and determinations as to factual matters.”

Subsec. (c). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Pub. L. 102-82, §8(1), substituted “Archivist of the United States” for “Administrator of the National Archives and Records Administration”.

Pub. L. 102-82, §1(2), redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102-82, §1(1), struck out subsec. (d) which read as follows:

“(1) In the case of a proceeding determined by a single judge of the Court, the decision of the judge shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the judge the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by a panel of the Court. In such a case, the decision of the judge initially deciding the case shall not be a part of the record.

“(2) In the case of a proceeding determined by a panel of the Court, the decision of the panel shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the panel the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by an expanded panel of the Court (or the Court en banc). In such a case, the decision of the panel initially deciding the case shall not be a part of the record.”

Subsec. (e). Pub. L. 102-82, §1(2), redesignated subsec. (e) as (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7268. Availability of proceedings

(a) Except as provided in subsection (b) of this section, all decisions of the Court of Appeals for Veterans Claims and all briefs, motions, documents, and exhibits received by the Court (including a transcript of the stenographic report of the hearings) shall be public records open to the inspection of the public.

(b)(1) The Court may make any provision which is necessary to prevent the disclosure of confidential information, including a provision that any such document or information be placed under seal to be opened only as directed by the Court.

(2) After the decision of the Court in a proceeding becomes final, the Court may, upon motion of the appellant or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, submitted to the Court or the Court may, on its own motion, make such other disposition thereof as it considers advisable.

(c)(1) The Court shall prescribe rules, in accordance with section 7264(a) of this title, to

protect privacy and security concerns relating to all filing of documents and the public availability under this subsection of documents retained by the Court or filed electronically with the Court.

(2) The rules prescribed under paragraph (1) shall be consistent to the extent practicable with rules addressing privacy and security issues throughout the Federal courts.

(3) The rules prescribed under paragraph (1) shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4117, §4068; renumbered §7268, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-82, §8(2), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 110-389, title VI, §602, Oct. 10, 2008, 122 Stat. 4177.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-389 added subsec. (c).

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4068 of this title as this section.

Subsec. (b)(2). Pub. L. 102-82 substituted “may, upon motion of the appellant or the Secretary,” for “shall” and “or the Court” for “before the Court”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7269. Publication of decisions

(a) The Court of Appeals for Veterans Claims shall provide for the publication of decisions of the Court in such form and manner as may be best adapted for public information and use. The Court may make such exceptions, or may authorize the chief judge to make such exceptions, to the requirement for publication in the preceding sentence as may be appropriate.

(b) Such authorized publication shall be competent evidence of the decisions of the Court of Appeals for Veterans Claims therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.

(c) Such publications shall be subject to sale in the same manner and upon the same terms as other public documents.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4118, §4069; renumbered §7269, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsecs. (a), (b). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4069 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov.

11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 7281. Employees

(a) The Court of Appeals for Veterans Claims may appoint a clerk without regard to the provisions of title 5 governing appointments in the competitive service. The clerk shall serve at the pleasure of the Court.

(b) The judges of the Court may appoint law clerks and secretaries, in such numbers as the Court may approve, without regard to the provisions of title 5 governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

(c) The clerk, with the approval of the Court, may appoint necessary deputies and employees without regard to the provisions of title 5 governing appointments in the competitive service.

(d) The Court may fix and adjust the rates of basic pay for the clerk and other employees of the Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5. To the maximum extent feasible, the Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

(e) In making appointments under subsections (a) through (c) of this section, preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(f) The Court may procure the services of experts and consultants under section 3109 of title 5.

(g) The chief judge of the Court may exercise the authority of the Court under this section whenever there are not at least two other judges of the Court.

(h) The Court shall not be considered to be an agency within the meaning of section 3132(a)(1) of title 5.

(i) The Court may accept and utilize voluntary services and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5 and may accept, hold, administer, and utilize gifts and bequests of personal property for the purposes of aiding or facilitating the work of the Court. Gifts or bequests of money to the Court shall be covered into the Treasury.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4118, §4081; amended Pub. L. 101-94, title II, §204(a), Aug. 16, 1989, 103 Stat. 627; renumbered §7281, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, §7, Aug. 6, 1991, 105 Stat. 377; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106-117, title X, §1035(1), Nov. 30, 1999, 113 Stat. 1595.)

REFERENCES IN TEXT

The provisions of title 5 governing appointment in the competitive service, referred to in subsecs. (a) to (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1999—Subsec. (g). Pub. L. 106-117 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The Chief Judge of the Court may exercise the authority of the Court under this section whenever there are not at least two associate judges of the Court."

1998—Subsec. (a). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40 renumbered section 4081 of this title as this section.

Subsec. (i). Pub. L. 102-82 added subsec. (i).

1989—Pub. L. 101-94 amended section generally. Prior to amendment, section read as follows: "The Court of Veterans Appeals may appoint such employees as may be necessary to execute the functions vested in the Court. Such appointments shall be made in accordance with the provisions of title 5 governing appointment in the competitive service, except that the Court may classify such positions based upon the classification of comparable positions in the judicial branch. The basic pay of such employees shall be fixed in accordance with subchapter III of chapter 53 of title 5."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 204(c) of Pub. L. 101-94 provided that: "Notwithstanding section 401 of the Veterans' Judicial Review Act [Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title], the authority provided by section 4081 [now 7281] of title 38, United States Code, as amended by subsection (a), shall take effect on the date of the enactment of this Act [Aug. 16, 1989]."

LIMITATION ON CONVERSION OF EMPLOYEES TO COMPETITIVE SERVICE

Section 204(b) of Pub. L. 101-94, as amended by Pub. L. 105-368, title V, §512(c), Nov. 11, 1998, 112 Stat. 3342, provided that: "Notwithstanding clause (1)(A) of the proviso under the heading 'Court of Veterans Appeals' in chapter XI of [title I of] Public Law 101-45 [formerly set out below], no employee of the United States Court of Appeals for Veterans Claims may be converted to the competitive service without the approval of the Court."

APPOINTMENT OF EMPLOYEES ELIGIBLE FOR NON-COMPETITIVE CONVERSION TO POSITION IN COMPETITIVE SERVICE; PROCUREMENT OF EXPERTS AND CONSULTANTS

Pub. L. 101-45, title I, June 30, 1989, 103 Stat. 113, authorized United States Court of Veterans Appeals, during fiscal year 1989, to appoint not to exceed 35 employees to positions in competitive service if certain requirements were met and to procure services of experts and consultants.

§ 7282. Budget and expenditures

(a) The budget of the Court of Appeals for Veterans Claims as submitted by the Court for inclusion in the budget of the President for any fiscal year shall be included in that budget without review within the executive branch.

(b) The Court may make such expenditures (including expenditures for personal services and

rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to execute efficiently the functions vested in the Court.

(c) All expenditures of the Court shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the chief judge. Except as provided in section 7285 of this title, all such expenditures shall be paid out of moneys appropriated for purposes of the Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4118, §4082; renumbered §7282 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4082 of this title as this section.

Subsec. (c). Pub. L. 102-40, §402(d)(1), substituted “7285” for “4085”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7283. Disposition of fees

Except for amounts received pursuant to section 7285 of this title, all fees received by the Court of Appeals for Veterans Claims shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4118, §4083; renumbered §7283 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4083 of this title as this section and substituted “7285” for “4085”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7284. Fee for transcript of record

The Court of Appeals for Veterans Claims may fix a fee, not in excess of the fee authorized by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record of any proceeding before the Court, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4118, §4084; renumbered §7284, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4084 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7285. Practice and registration fees

(a) The Court of Appeals for Veterans Claims may impose a reasonable periodic registration fee on persons admitted to practice before the Court. The frequency and amount of such fee shall be determined by the Court. The Court may also impose a reasonable registration fee on persons (other than judges of the Court) participating at judicial conferences convened pursuant to section 7286 of this title or in any other court-sponsored activity.

(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the following purposes:

(1) Conducting investigations and proceedings, including employing independent counsel, to pursue disciplinary matters.

(2) Defraying the expenses of—

(A) judicial conferences convened pursuant to section 7286 of this title; and

(B) other activities and programs of the Court that are intended to support and foster communication and relationships between the Court and persons practicing before the Court or the study, understanding, public commemoration, or improvement of veterans law or of the work of the Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4119, §4085; renumbered §7285, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-103, title VI, §604(a)-(c)(1), Dec. 27, 2001, 115 Stat. 999; Pub. L. 110-389, title VI, §605, Oct. 10, 2008, 122 Stat. 4179.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-389 inserted “reasonable” after “impose a” in two places and struck out “, except that such amount may not exceed \$30 per year” after “by the Court”.

2001—Pub. L. 107-103, §604(c)(1), substituted “Practice and registration fees” for “Practice fee” in section catchline.

Subsec. (a). Pub. L. 107-103, §604(a), inserted at end “The Court may also impose a registration fee on persons (other than judges of the Court) participating at judicial conferences convened pursuant to section 7286 of this title or in any other court-sponsored activity.”

Subsec. (b). Pub. L. 107-103, §604(b), substituted “for the following purposes:” and pars. (1) and (2) for “for the purposes of (1) employing independent counsel to pursue disciplinary matters, and (2) defraying administrative costs for the implementation of the standards of proficiency prescribed for practice before the Court.”

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4085 of this title as this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov.

11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7286. Judicial Conference of the Court

The Chief Judge of the Court of Appeals for Veterans Claims may summon the judges of the Court to an annual judicial conference, at a time and place that the Chief Judge designates, for the purpose of considering the business of the Court and recommending means of improving the administration of justice within the Court's jurisdiction. The Court shall provide by its rules for representation and active participation at such conference by persons admitted to practice before the Court and by other persons active in the legal profession.

(Added Pub. L. 102-82, §2(a), Aug. 6, 1991, 105 Stat. 375; amended Pub. L. 105-368, title V, §512(a)(1), (2)(A), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368 struck out “of Veterans Appeals” after “Court” in section catchline and substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” in text.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7287. Administration

Notwithstanding any other provision of law, the Court of Appeals for Veterans Claims may exercise, for purposes of management, administration, and expenditure of funds of the Court, the authorities provided for such purposes by any provision of law (including any limitation with respect to such provision of law) applicable to a court of the United States (as that term is defined in section 451 of title 28), except to the extent that such provision of law is inconsistent with a provision of this chapter.

(Added Pub. L. 107-103, title VI, §605(a), Dec. 27, 2001, 115 Stat. 1000.)

§ 7288. Annual report

(a) IN GENERAL.—The chief judge of the Court shall submit to the appropriate committees of Congress each year a report summarizing the workload of the Court for the fiscal year ending during the preceding year.

(b) ELEMENTS.—Each report under subsection (a) shall include, with respect to the fiscal year covered by such report, the following information:

- (1) The number of appeals filed with the Court.
- (2) The number of petitions filed with the Court.
- (3) The number of applications filed with the Court under section 2412 of title 28.
- (4) The total number of dispositions by each of the following:
 - (A) The Court as a whole.
 - (B) The Clerk of the Court.
 - (C) A single judge of the Court.
 - (D) A multi-judge panel of the Court.
 - (E) The full Court.

(5) The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial.

(6) The median time from filing an appeal to disposition by each of the following:

- (A) The Court as a whole.
- (B) The Clerk of the Court.
- (C) A single judge of the Court.
- (D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court).

(7) The median time from filing a petition to disposition by the Court.

(8) The median time from filing an application under section 2412 of title 28 to disposition by the Court.

(9) The median time from the completion of briefing requirements by the parties to disposition by the Court.

(10) The number of oral arguments before the Court.

(11) The number of cases appealed to the United States Court of Appeals for the Federal Circuit.

(12) The number and status of appeals and petitions pending with the Court and of applications described in paragraph (3) as of the end of such fiscal year.

(13) The number of cases pending with the Court more than 18 months as of the end of such fiscal year.

(14) A summary of any service performed for the Court by a recalled retired judge of the Court.

(15) An assessment of the workload of each judge of the Court, including consideration of the following:

- (A) The time required of each judge for disposition of each type of case.
- (B) The number of cases reviewed by the Court.
- (C) The average workload of other Federal judges.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

- (1) the Committee on Veterans' Affairs of the Senate; and
- (2) the Committee on Veterans' Affairs of the House of Representatives.

(Added Pub. L. 110-389, title VI, §604(a), Oct. 10, 2008, 122 Stat. 4178.)

SUBCHAPTER IV—DECISIONS AND REVIEW

§ 7291. Date when Court decision becomes final

(a) A decision of the United States Court of Appeals for Veterans Claims shall become final upon the expiration of the time allowed for filing, under section 7292 of this title, a notice of appeal from such decision, if no such notice is duly filed within such time. If such a notice is filed within such time, such a decision shall become final—

- (1) upon the expiration of the time allowed for filing a petition for certiorari with the Supreme Court of the United States, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed

by the United States Court of Appeals for the Federal Circuit and no petition for certiorari is duly filed;

(2) upon the denial of a petition for certiorari, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit; or

(3) upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if that Court directs that the decision of the Court of Appeals for Veterans Claims be affirmed or the appeal dismissed.

(b)(1) If the Supreme Court directs that the decision of the Court of Appeals for Veterans Claims be modified or reversed, the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(2) If the decision of the Court of Appeals for Veterans Claims is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the Court of Appeals for Veterans Claims was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(c) If the Supreme Court orders a rehearing, or if the case is remanded by the United States Court of Appeals for the Federal Circuit to the Court of Appeals for Veterans Claims for a rehearing, and if—

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered upon such rehearing shall become final in the same manner as though no prior decision of the Court of Appeals for Veterans Claims had been rendered.

(d) As used in this section, the term “mandate”, in case a mandate has been recalled be-

fore the expiration of 30 days from the date of issuance thereof, means the final mandate.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4119, §4091; renumbered §7291 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105-368, title V, §512(a)(1), (2)(B), Nov. 11, 1998, 112 Stat. 3341.)

AMENDMENTS

1998—Pub. L. 105-368, §512(a)(2)(B), substituted “Court decision” for “United States Court of Veterans Appeals decision” in section catchline.

Subsecs. (a) to (c). Pub. L. 105-368, §512(a)(1), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” wherever appearing.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4091 of this title as this section.

Subsec. (a). Pub. L. 102-40, §402(d)(1), substituted “7292” for “4092” in introductory provisions.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” in pars. (1) and (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7292. Review by United States Court of Appeals for the Federal Circuit

(a) After a decision of the United States Court of Appeals for Veterans Claims is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of a decision of the Court on a rule of law or of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the Court of Appeals for Veterans Claims within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.

(b)(1) When a judge or panel of the Court of Appeals for Veterans Claims, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Appeals for Veterans Claims. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the

Court of Appeals for Veterans Claims, unless a stay is ordered by a judge of the Court of Appeals for Veterans Claims or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the Court of Appeals for Veterans Claims.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision. The judgment of such court shall be final subject to review by the Supreme Court upon certiorari, in the manner provided in section 1254 of title 28.

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Appeals for Veterans Claims that the Court of Appeals for the Federal Circuit finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law.

(2) Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the Court of Appeals for Veterans Claims is not in accordance with law, to modify or reverse the decision of the Court of Appeals for Veterans Claims or to remand the matter, as appropriate.

(2) Rules for review of decisions of the Court of Appeals for Veterans Claims shall be those prescribed by the Supreme Court under section 2072 of title 28.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4120, §4092; amended Pub. L. 101-94, title III, §302(b), Aug. 16, 1989, 103 Stat. 628; renumbered §7292, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(5), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-330, title IV, §402(a), Dec. 6, 2002, 116 Stat. 2832.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-330 inserted “a decision of the Court on a rule of law or of” after “the validity of” in first sentence.

1998—Subsecs. (a), (b), (d)(1), (e). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” wherever appearing.

1991—Pub. L. 102-40 renumbered section 4092 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1155” for “355”.

Subsec. (b)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (c). Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “United States Court” for “United States Courts”.

1989—Subsec. (d)(1). Pub. L. 101-94 struck out “statute or” before “regulation”.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-330, title IV, §402(b), Dec. 6, 2002, 116 Stat. 2832, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any appeal—

“(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act [Dec. 6, 2002]; or

“(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-94 effective as if included in Pub. L. 100-687, div. A, see section 302(c) of Pub. L. 101-94, set out as a note under section 5701 of this title.

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

§ 7296. Retirement of judges

(a) For purposes of this section:

(1) The term “Court” means the United States Court of Appeals for Veterans Claims.

(2) The term “judge” means a judge of the Court.

(b)(1) A judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least
65	15
66	14
67	13
68	12
69	11
70	10

(2) A judge who is not reappointed following the expiration of the term for which appointed may retire upon the completion of that term if the judge has served as a judge of the Court for 15 years or more.

(3) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall retire.

(c)(1)(A) A judge who is appointed on or after the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and who retires under subsection (b) and elects under subsection

(d) to receive retired pay under this subsection shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title, the retired pay of the judge shall (subject to section 7257(d)(2) of this title) be the rate of pay applicable to that judge at the time of retirement, as adjusted from time to time under subsection (f)(3).

(ii) In the case of a judge other than a recall-eligible retired judge, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(B) A judge who retired before the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and elected under subsection (d) to receive retired pay under this subsection, or a judge who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection, shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court.

(ii) In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(iii) In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.

(2) An individual who serves as a judge for less than 10 years and who retires under subsection (b)(3) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall receive retired pay at a rate equal to one-half of the rate of pay in effect at the time of retirement.

(3) Retired pay under this subsection shall begin to accrue on the day following the day on which the individual's salary as judge ceases to accrue and shall continue to accrue during the remainder of the individual's life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge.

(d)(1) A judge may elect to receive retired pay under subsection (c) of this section. Such an election—

(A) may be made only while an individual is a judge (except that, in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, the election may be made at any time before the date after the day on which the individual's successor takes office); and

(B) may not be revoked after the retired pay begins to accrue.

(2) In the case of a judge other than the chief judge, such an election shall be made by filing

notice of the election in writing with the chief judge. In the case of the chief judge, such an election shall be made by filing notice of the election in writing with the Director of the Office of Personnel Management.

(3) The chief judge shall transmit to the Director of the Office of Personnel Management a copy of each notice filed with the chief judge under this subsection.

(e) If an individual for whom an election to receive retired pay under subsection (c) is in effect accepts compensation for employment with the United States, the individual shall, to the extent of the amount of that compensation, forfeit all rights to retired pay under subsection (c) of this section for the period for which the compensation is received.

(f)(1) Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply with respect to service as a judge as if this section had not been enacted.

(2) In the case of any individual who has filed an election to receive retired pay under subsection (c) of this section—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise) except as authorized by section 8440d of title 5;

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to that individual under subsection (c) of this section or from any other salary, pay, or compensation payable to that individual, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) or 8401(a) of title 5, whichever applies, upon making application therefor with the Office of Personnel Management.

(3)(A) A cost-of-living adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section only in the case of retired pay computed under paragraph (1)(A)(i) or (2) of subsection (c).

(B) If such a cost-of-living adjustment would (but for this subparagraph) result in the retired pay of a retired judge being in excess of the annual rate of pay in effect for judges of the Court as provided in section 7253(e) of this title, such adjustment may be made only in such amount as results in the retired pay of the retired judge being equal to that annual rate of pay (as in effect on the effective date of such adjustment).

(g)(1) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall certify to the President in writing that such permanent disability exists. If the chief judge retires for such a disability, the retirement of the chief judge shall not take effect until concurred in by the President. If any other judge retires for such a disability, the chief judge shall furnish to the

President a certificate of disability signed by the chief judge.

(2) Whenever the President finds that a judge has become permanently disabled and as a result of that disability is unable to perform the duties of the office, the President shall declare that judge to be retired. Before a judge may be retired under this paragraph, the judge shall be provided with a full specification of the reasons for the retirement and an opportunity to be heard.

(h)(1) An individual who has filed an election to receive retired pay under subsection (c) of this section may revoke such election at any time before the first day on which retired pay would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice of the election in writing with the Director of the Office of Personnel Management. The Office of Personnel Management shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) In the case of a revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (c) of this section;

(B) for purposes of section 7297 of this title—

(i) the individual shall be treated as not having filed an election under section 7297(b) of this title, and

(ii) section 7297(e) of this title shall not apply and the amount credited to such individual's account (together with interest at 3 percent per year, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to the individual;

(C) no credit shall be allowed for any service as a judge of the Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest;

(D) the Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (d); and

(E) if subparagraphs (C) and (D) of this paragraph are complied with, service on the Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(i)(1) Beginning with the next pay period after the Director of the Office of Personnel Management receives a notice under subsection (d) of this section that a judge has elected to receive retired pay under this section, the Director shall deduct and withhold 1 percent of the salary of such judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Court of Appeals for Veterans Claims Judges Retirement

Fund. Deductions under this subsection from the salary of a judge shall terminate upon the retirement of the judge or upon the completion of 15 years of service for which either deductions under this subsection or a deposit under subsection (j) of this section has been made, whichever occurs first.

(2) Each judge who makes an election under subsection (d) of this section shall be considered to agree to the deductions from salary which are made under paragraph (1) of this subsection.

(j) A judge who makes an election under subsection (d) of this section shall deposit, for service on the Court performed before the election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for the first years, not exceeding 15 years, of that service. Retired pay may not be allowed until a deposit required by this subsection has been made.

(k) The amounts deducted and withheld under subsection (i) of this section, and the amounts deposited under subsection (j) of this section, shall be deposited in the Court of Appeals for Veterans Claims Retirement Fund for credit to individual accounts in the name of each judge from whom such amounts are received.

(Added Pub. L. 101-94, title I, §101(a), Aug. 16, 1989, 103 Stat. 617, §4096; renumbered §7296 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-82, §5(c)(1), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102-198, §7(c)(4)(D), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106-117, title X, §§1022, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595; Pub. L. 107-103, title VI, §602, Dec. 27, 2001, 115 Stat. 999; Pub. L. 110-389, title VI, §603(b)(1), (2), Oct. 10, 2008, 122 Stat. 4177, 4178.)

REFERENCES IN TEXT

The date of the enactment of the Veterans' Benefits Improvement Act of 2008, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 110-389, which was approved Oct. 10, 2008.

The Civil Service Retirement and Disability Fund, referred to in subsecs. (f)(2)(B) and (h)(3)(C), (D), is provided for in section 8348 of Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (c)(1). Pub. L. 110-389, §603(b)(1), added par. (1) and struck out former par. (1), which related to retirement pay structure for retired judges based on recall status.

Subsec. (f)(3)(A). Pub. L. 110-389, §603(b)(2), substituted "paragraph (1)(A)(i) or (2)" for "paragraph (2)".

2001—Subsec. (b)(2). Pub. L. 107-103 struck out at end: "In order to retire under this paragraph, a judge must, not earlier than 9 months preceding the date of the expiration of the judge's term of office and not later than 6 months preceding such date, advise the President in writing that the judge is willing to accept reappointment to the Court."

1999—Subsec. (a)(2). Pub. L. 106-117, §1035(2), substituted "a judge" for "the chief judge or an associate judge".

Subsec. (c)(1). Pub. L. 106-117, §1022(a), substituted "as follows:" for "at the rate of pay in effect at the time of retirement." and added subpars. (A) to (C).

Subsec. (f)(3). Pub. L. 106-117, §1022(b), added par. (3).

1998—Subsecs. (a)(1), (i)(1), (k). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4096 of this title as this section.

Subsec. (f)(2)(A). Pub. L. 102-198 substituted “8440d” for “8440c”.

Pub. L. 102-82 inserted before semicolon at end “except as authorized by section 8440c of title 5”.

Subsec. (h)(3)(B). Pub. L. 102-40, § 402(d)(1), substituted “7297” for “4097” in introductory provisions, “7297(b)” for “4097(b)” in cl. (i), and “7297(e)” for “4097(e)” in cl. (ii).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1035(2) of Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

TRANSITIONAL PROVISIONS TO STAGGER TERMS OF JUDGES

Pub. L. 106-117, title X, § 1002, Nov. 30, 1999, 113 Stat. 1588, provided that: “In this title [see Short Title of 1999 Amendments note set out under section 101 of this title], the term ‘Court’ means the United States Court of Appeals for Veterans Claims.”

Pub. L. 106-117, title X, §§ 1011, 1012, Nov. 30, 1999, 113 Stat. 1588, 1590, provided that:

“SEC. 1011. EARLY RETIREMENT AUTHORITY FOR CURRENT JUDGES.

“(a) RETIREMENT AUTHORIZED.—One eligible judge may retire in accordance with this section in 2000 or 2001, and one additional eligible judge may retire in accordance with this section in 2001.

“(b) ELIGIBLE JUDGES.—For purposes of this section, an eligible judge is a judge of the Court (other than the chief judge) who—

“(1) has at least 10 years of service creditable under section 7296 of title 38, United States Code;

“(2) has made an election to receive retired pay under section 7296 of such title;

“(3) has at least 20 years of service described in section 7297(l) of such title; and

“(4) is at least 55 years of age.

“(c) MULTIPLE ELIGIBLE JUDGES.—If for any year specified in subsection (a) more than one eligible judge provides notice in accordance with subsection (d), the judge who has the greatest seniority as a judge of the Court shall be the judge who is eligible to retire in accordance with this section in that year.

“(d) NOTICE.—An eligible judge who desires to retire in accordance with this section with respect to any year covered by subsection (a) shall provide to the President and the chief judge of the Court written notice to that effect and stating that the judge agrees to the temporary service requirements of subsection (j). Such notice shall be provided not later than April 1 of that year and shall specify the retirement date in accordance with subsection (e). Notice provided under this subsection shall be irrevocable.

“(e) DATE OF RETIREMENT.—A judge who is eligible to retire in accordance with this section shall be retired during the calendar year as to which notice is provided pursuant to subsection (d), but not earlier than 30 days after the date on which that notice is provided pursuant to subsection (d).

“(f) APPLICABLE PROVISIONS.—Except as provided in subsections (g) and (j), a judge retired in accordance with this section shall be considered for all purposes to be retired under section 7296(b)(1) of title 38, United States Code.

“(g) APPLICABILITY OF RECALL STATUS AUTHORITY.—The provisions of section 7257 of this title shall apply to a judge retired in accordance with this section as if

the judge is a judge specified in subsection (a)(2)(A) of that section.

“(h) RATE OF RETIRED PAY.—The rate of retired pay for a judge retiring in accordance with this section is—

“(1) the rate applicable to that judge under section 7296(c)(1) of title 38, United States Code, multiplied by

“(2) the fraction (not in excess of 1) in which—

“(A) the numerator is the number of years of service of the judge as a judge of the Court creditable under section 7296 of such title; and

“(B) the denominator is 15.

“(i) ADJUSTMENTS IN RETIRED PAY FOR JUDGES AVAILABLE FOR RECALL.—Subject to section 7296(f)(3)(B) of title 38, United States Code, an adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section in the case of a judge who is a recall-eligible retired judge under section 7257 of such title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability.

“(j) DUTY OF ACTUARY.—[Amended section 7298 of this title.]

“(k) TRANSITIONAL SERVICE OF JUDGE RETIRED UNDER THIS SECTION.—(1) A judge who retires under this section shall continue to serve on the Court during the period beginning on the effective date of the judge's retirement under subsection (e) and ending on the earlier of—

“(A) the date on which a person is appointed to the position on the Court vacated by the judge's retirement; and

“(B) the date on which the judge's original appointment to the court would have expired.

“(2) Subsections (f) and (g) of section 7253 of title 38, United States Code, shall apply with respect to the service of a judge on the Court under this section.

“(3) Notwithstanding any other provision of law, a person whose service as a judge of the Court continues under this section shall be paid for the period of service under this subsection at the rate that is the difference between the current rate of pay for a judge of the Court and the rate of the judge's retired pay under subsection (g).

“(4) Amounts paid under paragraph (3)—

“(A) shall not be treated as—

“(i) compensation for employment with the United States for purposes of section 7296(e) of title 38, United States Code, or any provision of title 5, United States Code, relating to the receipt or forfeiture of retired pay or retirement annuities by a person accepting compensation for employment with the United States; or

“(ii) pay for purposes of deductions or contributions for or on behalf of the person to retired pay under subchapter V of chapter 72 of title 38, United States Code, or under chapter 83 or 84 of title 5, United States Code, as applicable; but

“(B) may, at the election of the person, be treated as pay for purposes of deductions or contributions for or on behalf of the person to a retirement or other annuity, or both, under subchapter V of chapter 72 of title 38, United States Code, or under chapter 83 or 84 of title 5, United States Code, as applicable.

“(5) Amounts paid under paragraph (3) shall be derived from amounts available for payment of salaries and benefits of judges of the Court.

“(6) The service as a judge of the Court under this subsection of a person who makes an election provided for under paragraph (4)(B) shall constitute creditable service toward the judge's years of judicial service for purposes of section 7297 of title 38, United States Code, with such service creditable at a rate equal to the rate at which such service would be creditable for such purposes if served by a judge of the Court under chapter 72 of that title. For purposes of subsection (k)(3) of that section, the average annual pay for such service shall be the sum of the judge's retired pay and the amount paid under paragraph (3) of this subsection.

“(7) In the case of such a person who makes an election provided for under paragraph (4)(B), upon the termination of the service of that person as a judge of the Court under this subsection, the retired pay of that person under subsection (g) shall be recomputed to reflect the additional period of service served under this subsection.

“(I) TREATMENT OF POLITICAL PARTY MEMBERSHIP.—For purposes of determining compliance with the last sentence of section 7253(b) of title 38, United States Code, the political party membership of a judge serving on the Court under subsection (j) shall not be taken into account.

“SEC. 1012. MODIFIED TERMS FOR NEXT TWO JUDGES APPOINTED TO THE COURT.

“(a) MODIFIED TERMS.—The term of office of the first two judges appointed to the Court after the date of the enactment of this Act [Nov. 30, 1999] shall be 13 years (rather than the period specified in section 7253(c) of title 38, United States Code).

“(b) ELIGIBILITY FOR RETIREMENT.—(1) For purposes of determining the eligibility to retire under section 7296 of title 38, United States Code, of the two judges of the Court whose term of office is determined under subsection (a)—

“(A) the age and service requirements in the table in paragraph (2) shall apply to those judges rather than the otherwise applicable age and service requirements specified in the table in subsection (b)(1) of that section; and

“(B) the minimum years of service applicable to those judges for eligibility to retire under the first sentence of subsection (b)(2) of that section shall be 13 years instead of 15 years.

“(2) The age and service requirements in this paragraph are as follows:

The judge has attained age:	And the years of service as a judge are at least
65	13
66	13
67	13
68	12
69	11
70	10.”

Pub. L. 106-117, title X, §1032(b), Nov. 30, 1999, 113 Stat. 1595, provided that: “A person serving as a judge of the Court under section 1011 may not serve as chief judge of the Court.”

§ 7297. Survivor annuities

(a) For purposes of this section:

(1) The term “Court” means the United States Court of Appeals for Veterans Claims.

(2) The term “judge” means a judge of the Court who is in active service or who has retired under section 7296 of this title.

(3) The term “pay” means salary received under section 7253(e) of this title and retired pay received under section 7296 of this title.

(4) The term “retirement fund” means the Court of Appeals for Veterans Claims Retirement Fund established under section 7298 of this title.

(5) The term “surviving spouse” means a surviving spouse of an individual who (A) was married to such individual for at least one year immediately preceding the individual's death, or (B) is a parent of issue by the marriage.

(6) The term “dependent child” has the meaning given the term “child” in section 376(a)(5) of title 28.

(7) The term “Member of Congress” means a Representative, a Senator, a Delegate to Con-

gress, or the Resident Commissioner of Puerto Rico.

(8) The term “assassination” as applied to a judge shall have the meaning provided that term in section 376(a)(7) of title 28 as applied to a judicial official.

(b) A judge may become a participant in the annuity program under this section by filing a written election under this subsection while in office or within six months after the date on which the judge marries if the judge has retired under section 7296 of this title. Any such election shall be made in such manner as may be prescribed by the Court.

(c) There shall be deducted and withheld each pay period from the pay of a judge who has made an election under subsection (b) of this section a sum equal to that percentage of the judge's pay that is the same as provided for the deduction from the salary or retirement salary of a judge of the United States Court of Federal Claims for the purpose of a survivor annuity under section 376(b)(1)(B) of title 28. Amounts so deducted and withheld shall be deposited in the retirement fund. A judge who makes an election under subsection (b) of this section shall be considered by that election to agree to the deductions from the judge's pay required by this subsection.

(d)(1) A judge who makes an election under subsection (b) of this section shall deposit, with interest at 3 percent per year compounded on December 31 of each year, to the credit of the retirement fund, an amount equal to 3.5 percent of the judge's pay and of the judge's basic salary, pay, or compensation for service as a Member of Congress, and for any other civilian service within the purview of section 8332 of title 5. Each such judge may elect to make such deposits in installments during the judge's period of service in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annual annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless the surviving spouse elects to eliminate such service entirely from credit under subsection (k) of this section. However, a deposit shall not be required from a judge for any year with respect to which deductions from the judge's pay, or a deposit, were actually made (and not withdrawn) under the civil service retirement laws.

(2) The interest required under the first sentence of paragraph (1) shall not be required for any period—

(A) during which a judge was separated from any service described in section 376(d)(2) of title 28; and

(B) during which the judge was not receiving retired pay based on service as a judge or receiving any retirement salary as described in section 376(d)(1) of title 28.

(e) If the service of a judge who makes an election under subsection (b) of this section terminates other than pursuant to the provisions of section 7296 of this title, or if any judge ceases

to be married after making the election under subsection (b) of this section and revokes (in a writing filed as provided in subsection (b) of this section) such election, the amount credited to the judge's individual account (together with interest at 3 percent per year compounded on December 31 of each year to the date of the judge's relinquishment of office) shall be returned to the judge. For the purpose of this section, the service of a judge making an election under subsection (b) of this section shall be considered to have terminated pursuant to section 7296 of this title if—

- (1) the judge is not reappointed following expiration of the term for which appointed; and
- (2) at or before the time of the expiration of that term, the judge is eligible for and elects to receive retired pay under section 7296 of this title.

(f)(1) If a judge who makes an election under subsection (b) of this section dies after having rendered at least 18 months of civilian service (computed as prescribed in subsection (l) of this section), for the last 18 months of which the salary deductions provided for by subsection (c) of this section or the deposits required by subsection (d) of this section have actually been made (and not withdrawn) or the salary deductions required by the civil service retirement laws have actually been made (and not withdrawn)—

(A) if the judge is survived by a surviving spouse but not by a dependent child, there shall be paid to the surviving spouse an annuity beginning with the day of the death of the judge, in an amount computed as provided in subsection (k) of this section; or

(B) if the judge is survived by a surviving spouse and a dependent child or children, there shall be paid to the surviving spouse an immediate annuity in an amount computed as provided in subsection (k) of this section and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

- (i) 10 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or
- (ii) 20 percent of such average annual pay, divided by the number of such children; or

(C) if the judge is not survived by a surviving spouse but is survived by a dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

- (i) 20 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or
- (ii) 40 percent of such average annual pay, divided by the number of such children.

(2) The annuity payable to a surviving spouse under this subsection shall be terminated—

- (A) upon the surviving spouse's death; or
- (B) upon the remarriage of the surviving spouse before age 55.

(3) The annuity payable to a child under this subsection shall be terminated upon the child's death.

(4) In case of the death of a surviving spouse of a judge leaving a dependent child or children of

the judge surviving the spouse, the annuity of such child or children under paragraph (1)(B) of this subsection shall be recomputed and paid as provided in paragraph (1)(C) of this subsection. In any case in which the annuity of a dependent child is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the judge.

(5) If a judge dies as a result of an assassination and leaves a survivor or survivors who are otherwise entitled to receive annuity payments under this section, the 18-month requirement in the matter in paragraph (1) preceding subparagraph (A) shall not apply.

(g) Questions of family relationships, dependency, and disability arising under this section shall be determined in the same manner as such questions arising under chapter 84 of title 5 are determined.

(h)(1) If—

(A) a judge making an election under subsection (b) of this section dies while in office (i) before having rendered 5 years of civilian service computed as prescribed in subsection (l) of this section, or (ii) after having rendered 5 years of such civilian service but without a survivor entitled to annuity benefits provided by subsection (f) of this section; or

(B) the right of all persons entitled to an annuity under subsection (f) of this section based on the service of such judge terminates before a claim for such benefits has been established,

the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year, to the date of the death of such judge) shall be paid in the manner specified in paragraph (2) of this subsection.

(2) An amount payable under paragraph (1) of this subsection shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

(A) To the beneficiary or beneficiaries whom the judge designated in writing filed before death with the chief judge (except that in the case of the chief judge such designation shall be filed before death as prescribed by the Court).

(B) To the surviving spouse of the judge.

(C) To the child or children of the judge (and the descendants of any deceased children by representation).

(D) To the parents of the judge or the survivor of them.

(E) To the executor or administrator of the estate of the judge.

(F) To such other next of kin of the judge as may be determined by the chief judge to be entitled under the laws of the domicile of the judge at the time of the judge's death.

(3) Determination as to the surviving spouse, child, or parent of a judge for the purposes of paragraph (2) of this subsection shall be made without regard to the definitions in subsection (a) of this section.

(4) Payment under this subsection in the manner provided in this subsection shall be a bar to recovery by any other person.

(5) In a case in which the annuities of all persons entitled to annuity based upon the service of a judge terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year to the date of the death of the judge), the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (2) of this subsection.

(6) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any individual based upon the service of a judge shall be paid to that individual. Any accrued annuity remaining unpaid upon the death of an individual receiving an annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) To the executor or administrator of the estate of that person.

(B) After 30 days after the date of the death of such individual, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto.

Such payment shall be a bar to recovery by any other individual.

(i) When a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, the payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or the claimant's estate. If no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or the claimant's estate.

(j) Annuities under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity has accrued. An annuity under this section is not assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(k)(1) The annuity of the surviving spouse of a judge making an election under subsection (b) of this section shall be an amount equal to the sum of the following:

(A) The product of—

(i) 1.5 percent of the judge's average annual pay; and

(ii) the sum of the judge's years of judicial service, the judge's years of prior allowable service as a Member of Congress, the judge's years of prior allowable service performed as a member of the Armed Forces, and the judge's years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5).

(B) Three-fourths of 1 percent of the judge's average annual pay multiplied by the judge's years of allowable service not counted under subparagraph (A) of this paragraph.

(2) An annuity computed under this subsection may not exceed 50 percent of the judge's average annual pay and may not be less than 25 percent of such average annual pay. Such annuity shall be further reduced in accordance with subsection (d) of this section (if applicable).

(3) For purposes of this subsection, the term "average annual pay", with respect to a judge, means the average annual pay received by the judge for judicial service (including periods in which the judge received retired pay under section 7296(d) of this title) or for any other prior allowable service during the period of three consecutive years in which the judge received the largest such average annual pay.

(l) Subject to subsection (d) of this section, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of the judge's surviving spouse shall include the judge's years of service as a judge of the Court, the judge's years of service as a Member of Congress, the judge's years of active service as a member of the Armed Forces not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and the judge's years of any other civilian service within the purview of section 8332 of title 5.

(m) Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

(n) A judge making an election under subsection (b) of this section shall, at the time of such election, waive all benefits under the civil service retirement laws except section 8440d of title 5. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7296(d) of this title.

(o) Each survivor annuity payable from the retirement fund shall be increased at the same time as, and by the same percentage by which, annuities payable from the Judicial Survivors' Annuities Fund are increased pursuant to section 376(m) of title 28.

(Added Pub. L. 101-94, title I, §101(a), Aug. 16, 1989, 103 Stat. 620, §4097; renumbered §7297 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(6), June 13, 1991, 105 Stat. 287; Pub. L. 102-82, §5(c)(2), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102-198, §7(c)(4)(E), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105-368, title V, §§503, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106-117, title X, §§1023, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595.)

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106-117, §1035(2), substituted "a judge" for "the chief judge or an associate judge".

Pub. L. 106-117, §1023(e)(2)(A), inserted "who is in active service or who has retired under section 7296 of this title" after "Court".

Subsec. (a)(3). Pub. L. 106-117, §1023(e)(2)(B), substituted "7296" for "7296(c)".

Subsec. (a)(5). Pub. L. 106-117, §1023(a), substituted "one year" for "two years".

Subsec. (a)(8). Pub. L. 106-117, §1023(e)(2)(C), added par. (8).

Subsec. (b). Pub. L. 106-117, §1023(b), inserted "or within six months after the date on which the judge marries if the judge has retired under section 7296 of this title" before the period at end of first sentence.

Subsec. (c). Pub. L. 106-117, §1023(c), substituted "that percentage of the judge's pay that is the same as provided for the deduction from the salary or retirement salary of a judge of the United States Court of Federal Claims for the purpose of a survivor annuity under section 376(b)(1)(B) of title 28" for "3.5 percent of the judge's pay".

Subsec. (d). Pub. L. 106-117, §1023(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(1). Pub. L. 106-117, §1023(e)(1)(A), in introductory provisions, substituted "at least 18 months" for "at least 5 years" and "last 18 months" for "last 5 years".

Subsec. (f)(1)(A). Pub. L. 106-117, §1023(f), struck out "or following the surviving spouse's attainment of the age of 50 years, whichever is the later" after "death of the judge".

Subsec. (f)(5). Pub. L. 106-117, §1023(e)(1)(B), added par. (5).

1998—Subsec. (a)(1), (4). Pub. L. 105-368, §512(a)(1), substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

Subsec. (o). Pub. L. 105-368, §503, amended subsec. (o) generally. Prior to amendment, subsec. (o) read as follows: "Whenever the salaries of judges paid under section 7253(e) of this title are increased, each annuity payable from the retirement fund which is based, in whole or in part, upon a deceased judge having rendered some portion of that judge's final 18 months of service as a judge of the Court, shall also be increased. The amount of the increase in the annuity shall be determined by multiplying the amount of the annuity on the date on which the increase in salaries becomes effective by 3 percent for each full 5 percent by which those salaries were increased."

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4097 of this title as this section.

Subsec. (a)(3). Pub. L. 102-40, §402(d)(1), substituted "7253(e)" for "4053(e)" and "7296(c)" for "4096(c)".

Subsec. (a)(4). Pub. L. 102-40, §402(d)(1), substituted "7298" for "4098".

Subsec. (e). Pub. L. 102-40, §402(d)(1), substituted "7296" for "4096" wherever appearing.

Subsec. (h)(1)(A)(i). Pub. L. 102-54 amended subsec. (h)(1)(A)(i) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "subsection (i)" for "subsection (l)".

Subsec. (k)(3). Pub. L. 102-40, §402(d)(1), substituted "7296(d)" for "4096(d)".

Subsec. (n). Pub. L. 102-198 substituted "8440d" for "8440c".

Pub. L. 102-82 inserted "except section 8440c of title 5" before period at end of first sentence.

Pub. L. 102-40, §402(d)(1), substituted "7296(d)" for "4096(d)".

Subsec. (o). Pub. L. 102-40, §402(d)(1), substituted "7253(e)" for "4053(e)".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1035(2) of Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1) of Pub. L. 105-368 effective on first day of first month beginning more than

90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7298. Retirement Fund

(a) There is established in the Treasury a fund known as the Court of Appeals for Veterans Claims Retirement Fund.

(b) Amounts in the fund are available for the payment of judges' retired pay under section 7296 of this title and of annuities, refunds, and allowances under section 7297 of this title.

(c) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 7296 or 7297 of this title shall be deposited in the fund and credited to an individual account of the judge.

(d) The chief judge of the Court of Appeals for Veterans Claims shall submit to the President an annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

(e)(1) The chief judge may cause periodic examinations of the retirement fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose.

(2)(A) Subject to the availability of appropriations, there shall be deposited in the Treasury to the credit of the retirement fund, not later than the close of each fiscal year, such amounts as may be required to reduce to zero the unfunded liability (if any) of the fund. Such deposits shall be taken from sums available for that fiscal year for the payment of the expenses of the Court.

(B) For purposes of subparagraph (A) of this paragraph, the term "unfunded liability", with respect to any fiscal year, means the amount estimated by the chief judge to be equal to the excess (as of the close of that fiscal year) of—

- (i) the present value of all benefits payable from the fund (determined on an annual basis in accordance with section 9503 of title 31), over
- (ii) the sum of—

(I) the present values of future deductions under sections 7296(i) and 7297(c) of this title and future deposits under sections 7296(j) and 7296(d) of this title, and

(II) the balance in the fund as of the close of the fiscal year.

(C) For purposes of subparagraph (B), the term "present value" includes a value determined by an actuary with respect to a payment that may be made under subsection (b) from the retirement fund within the contemplation of law.

(D) Amounts deposited in the retirement fund under this paragraph shall not be credited to the account of any individual.

(f) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States, such portions of the retirement fund as in such Secretary's judgment may not be immediately required for payments from the fund. The income derived from such investments shall constitute a part of the fund.

(g) For purpose of section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control

Act of 1985 (2 U.S.C. 905(g)(1)(B)), the retirement fund shall be treated in the same manner as the Claims Judges' Retirement Fund.

(Added Pub. L. 101-94, title I, §101(a), Aug. 16, 1989, 103 Stat. 625, §4098; renumbered §7298 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105-368, title V, §§502, 512(a)(1), (2)(C), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106-117, title X, §1011(j), Nov. 30, 1999, 113 Stat. 1589.)

AMENDMENTS

1999—Subsec. (e)(2)(C), (D). Pub. L. 106-117 added subpar. (D) and redesignated former subpar. (C) as (D).

1998—Pub. L. 105-368, §512(a)(2)(C), struck out "Court of Veterans Appeals" before "Retirement Fund" in section catchline.

Subsecs. (a), (d). Pub. L. 105-368, §512(a)(1), substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

Subsec. (g). Pub. L. 105-368, §502, added subsec. (g).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4098 of this title as this section.

Subsecs. (b), (c). Pub. L. 102-40, §402(d)(1), substituted "7296" for "4096" and "7297" for "4097".

Subsec. (e)(2)(B)(ii)(I). Pub. L. 102-40, §402(d)(1), substituted "7296(i) and 7297(c)" for "4096(i) and 4097(c)" and "7296(j) and 7296(d)" for "4096(j) and 4096(d)".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1), (2)(C) of Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7299. Limitation on activities of retired judges

(a) A retired judge of the Court who is recall-eligible under section 7257 of this title and who in the practice of law represents (or supervises or directs the representation of) a client in making any claim relating to veterans' benefits against the United States or any agency thereof shall, pursuant to such section, be considered to have declined recall service and be removed from the status of a recall-eligible judge. The pay of such a judge, pursuant to section 7296 of this title, shall be the pay of the judge at the time of the removal from recall status.

(b) A recall-eligible judge shall be considered to be an officer or employee of the United States, but only during periods when the judge is serving in recall status. Any prohibition, limitation, or restriction that would otherwise apply to the activities of a recall-eligible judge shall apply only during periods when the judge is serving in recall status.

(Added Pub. L. 106-117, title X, §1024(a), Nov. 30, 1999, 113 Stat. 1593.)

CHAPTER 73—VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS

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[7367, 7368.]	Repealed.]

AMENDMENTS

2010—Pub. L. 111-275, title X, §1001(n)(1), Oct. 13, 2010, 124 Stat. 2897, substituted "the human immunodeficiency virus" for "human immunodeficiency virus" in item 7333.

Pub. L. 111-163, title V, §§505(a)(2), 515(b), title VIII, §805(b), May 5, 2010, 124 Stat. 1159, 1166, 1179, added items 7311A, 7321A, and 7365 and struck out former items 7364A "Coverage of employees under certain Federal tort claims laws" and 7365 "Applicable State law".

2008—Pub. L. 110-387, title IV, §404(b), title VIII, §806(b), Oct. 10, 2008, 122 Stat. 4129, 4141, added item 7330A and struck out item 7368 "Expiration of authority".

2006—Pub. L. 109-461, title X, §1006(b), Dec. 22, 2006, 120 Stat. 3468, provided that as of the enactment of Pub. L. 109-461, the amendments made by Pub. L. 109-444 were deemed for all purposes not to have taken effect and that Pub. L. 109-444 ceased to be in effect. See Amendment notes below and section 1006(b) of Pub. L. 109-461, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

Pub. L. 109-461, title II, §§209(a)(2), 212(a)(2), Dec. 22, 2006, 120 Stat. 3418, 3422, added items 7308, 7329, and 7330.

Pub. L. 109-444, §6(a)(2), Dec. 21, 2006, 120 Stat. 3312, which added items 7329 and 7330, was terminated by Pub. L. 109-461, §1006(b). See Amendment notes above.

2004—Pub. L. 108-422, title III, §§302(a)(2), 303(c)(2), Nov. 30, 2004, 118 Stat. 2385, 2387, added items 7327 and 7328.

2003—Pub. L. 108-170, title IV, §§401(a)(2), 402(a)(2), Dec. 6, 2003, 117 Stat. 2061, 2062, added items 7307 and 7364A.

2002—Pub. L. 107-287, §§2(a)(2), 3(a)(2), Nov. 7, 2002, 116 Stat. 2027, 2028, added items 7325 and 7326.

Pub. L. 107-135, title I, §125(a)(2), Jan. 23, 2002, 115 Stat. 2453, added item 7324.

2001—Pub. L. 107-14, §8(a)(14)(B), June 5, 2001, 115 Stat. 35, struck out item 7367 "Report to Congress".

2000—Pub. L. 106-419, title II, §201(b)(2), Nov. 1, 2000, 114 Stat. 1840, added item 7323.

1997—Pub. L. 105-114, title II, §208(a)(2), Nov. 21, 1997, 111 Stat. 2289, added item 7322.

1996—Pub. L. 104-262, title III, §§321(a)(2), 334(a)(2), 335(b), Oct. 9, 1996, 110 Stat. 3195, 3203, 3205, added items 7319 to 7321.

1994—Pub. L. 103-446, title XII, §1201(h)(3), Nov. 2, 1994, 108 Stat. 4688, inserted "PROTECTION OF" before "PATIENT" in heading for subchapter III.

1992—Pub. L. 102-585, title V, §511(a)(2), Nov. 4, 1992, 106 Stat. 4956, added item 7318.

Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984, substituted "Under Secretary for Health" for "Chief Medical Director" in item 7306.

1991—Pub. L. 102-40, title IV, §401(a)(1), (3), May 7, 1991, 105 Stat. 210, substituted "VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS" for "DEPARTMENT OF MEDICINE AND SURGERY" as chapter heading, added analysis for subchapters I to IV, and struck out former analysis consisting of subchapter I containing items 4101 to 4119 and 4210, subchapter II containing items 4121 to 4124, subchapter III containing items 4131 to 4134, subchapter IV containing items 4141 and 4142, subchapter V containing items 4151 and 4152, and subchapter VI containing items 4161 to 4168.

1990—Pub. L. 101-366, title I, §102(d), Aug. 15, 1990, 104 Stat. 436, added heading for subchapter IV and items 4141 and 4142.

1988—Pub. L. 100-322, title I, §122(b), title II, §§204(b), 212(a)(2), 216(e)(1), May 20, 1988, 102 Stat. 504, 512, 516, 530, added item 4210 [4120] after item 4119, substituted "Nondiscrimination against alcohol and drug abusers and persons infected with human immunodeficiency virus" for "Nondiscrimination in the admission of alcohol and drug abusers to Veterans' Administration health care facilities" in item 4133, substituted "Regulations" for "Coordination; reports" in item 4134, struck out heading for Subchapter IV, "VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM" and items 4141 "Establishment of program; purpose; duration", 4142 "Eligibility; application; written contract", 4143 "Obligated service", 4144 "Breach of contract; liability; waiver", 4145 "Exemption of scholarship payments from taxation", and 4146 "Program subject to availability of appropriations", and added heading for subchapter VI and items 4161 to 4168.

1986—Pub. L. 99-576, title VII, §702(12), Oct. 28, 1986, 100 Stat. 3302, substituted "appointments" for "appointment" in item 4106.

1985—Pub. L. 99-166, title II, §204(a)(2), Dec. 3, 1985, 99 Stat. 952, added heading for subchapter V and items 4151 and 4152.

1980—Pub. L. 96-330, title I, §116(a)(2), title II, §201(a)(2), Aug. 26, 1980, 94 Stat. 1039, 1047, added item 4119, heading for subchapter IV and items 4141 to 4146.

1976—Pub. L. 94-581, title I, §111(a)(2), Oct. 21, 1976, 90 Stat. 2852, added analysis for subchapter III consisting of items 4131 to 4134.

1975—Pub. L. 94-123, §2(d)(2), Oct. 22, 1975, 89 Stat. 673, added item 4118.

1973—Pub. L. 93-82, title II, §204(b), Aug. 2, 1973, 87 Stat. 192, substituted "Personnel administration" for "Administration" in item 4108.

1972—Pub. L. 92-541, §3(b), Oct. 24, 1972, 86 Stat. 1108, designated existing sections as subchapter I and added subchapter II.

1966—Pub. L. 89-785, title I, §§109(b), 111(d), 112(b), Nov. 7, 1966, 80 Stat. 1371, 1372, substituted "Special Medical Advisory group; other advisory bodies" for "Medical advisory Group" in item 4112, and "Temporary full-time, part-time, and without compensation appointments" for "Temporary and part-time appointments" in item 4114, and added item 4117.

1965—Pub. L. 89-311, §6(b), Oct. 31, 1965, 79 Stat. 1157, added item 4116.

1964—Pub. L. 88-426, title I, §117(b), Aug. 14, 1964, 78 Stat. 410, substituted "Office of the Chief Medical Director" for "Appointments and compensation" in item 4103.

1962—Pub. L. 87-793, §803(b), Oct. 11, 1962, 76 Stat. 861, substituted "Administration" for "Specialist ratings" in item 4108.

Pub. L. 87-574, §4(3), Aug. 6, 1962, 76 Stat. 309, inserted "; residencies and internships" in item 4114.

SUBCHAPTER I—ORGANIZATION

PRIOR PROVISIONS

A prior subchapter I of this chapter consisting of sections 4101 to 4120, related to organization of Department of Medicine and Surgery, prior to repeal by Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 210. See Prior Provisions notes set out under sections 4101 to 4110A of this title.

§ 7301. Functions of Veterans Health Administration: in general

(a) There is in the Department of Veterans Affairs a Veterans Health Administration. The Under Secretary for Health is the head of the Administration. The Under Secretary for Health may be referred to as the Chief Medical Director.

(b) The primary function of the Administration is to provide a complete medical and hospital service for the medical care and treatment of veterans, as provided in this title and in regulations prescribed by the Secretary pursuant to this title.

(Added Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 211; amended Pub. L. 102-405, title III, §302(c)(1), (2), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted "Under Secretary for Health is" for "Chief Medical Director is" and inserted at end "The Under Secretary for Health may be referred to as the Chief Medical Director."

§ 7302. Functions of Veterans Health Administration: health-care personnel education and training programs

(a) In order to carry out more effectively the primary function of the Veterans Health Administration and in order to assist in providing an adequate supply of health personnel to the Nation, the Secretary—

(1) to the extent feasible without interfering with the medical care and treatment of veterans, shall develop and carry out a program of education and training of health personnel; and

(2) shall carry out a major program for the recruitment, training, and employment of veterans with medical military occupation specialties as—

(A) physician assistants;

(B) expanded-function dental auxiliaries; and

(C) other medical technicians.

(b) In carrying out subsection (a)(1), the Secretary shall include in the program of education and training under that subsection the developing and evaluating of new health careers, interdisciplinary approaches, and career advancement opportunities.

(c) In carrying out subsection (a)(2), the Secretary shall include in the program of recruitment, training, and employment under that subsection measures to advise all qualified veterans with military occupation specialties referred to in that subsection, and all members of the armed forces about to be discharged or released from active duty who have such military occupation specialties, of employment opportunities with the Administration.

(d) The Secretary shall carry out subsection (a) in cooperation with the following institutions and organizations:

(1) Schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professions.

(2) Other institutions of higher learning.

(3) Medical centers.

(4) Academic health centers.

(5) Hospitals.

(6) Such other public or nonprofit agencies, institutions, or organizations as the Secretary considers appropriate.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 211.)

§ 7303. Functions of Veterans Health Administration: research programs

(a)(1) In order to carry out more effectively the primary function of the Administration and in order to contribute to the Nation's knowledge about disease and disability, the Secretary shall carry out a program of medical research in connection with the provision of medical care and treatment to veterans. Funds appropriated to carry out this section shall remain available until expended.

(2) Such program of medical research shall include biomedical research, mental illness research, prosthetic and other rehabilitative research, and health-care-services research.

(3) Such program shall stress—

(A) research into spinal-cord injuries and other diseases that lead to paralysis of the lower extremities; and

(B) research into injuries and illnesses particularly related to service.

(4) In carrying out such research program, the Secretary shall act in cooperation with the entities described in section 7302(d) of this title.

(b) Prosthetic research shall include research and testing in the field of prosthetic, orthotic, and orthopedic appliances and sensory devices. In order that the unique investigative material and research data in the possession of the Government may result in the improvement of such appliances and devices for all disabled persons, the Secretary (through the Under Secretary for Health) shall make the results of such research available to any person, and shall consult and cooperate with the Secretary of Health and Human Services and the Secretary of Education, in connection with programs carried out under section 204(b)(3) of the Rehabilitation Act of 1973 (relating to the establishment and support of Rehabilitation Engineering Research Centers).

(c)(1) In conducting or supporting clinical research, the Secretary shall ensure that, whenever possible and appropriate—

(A) women who are veterans are included as subjects in each project of such research; and

(B) members of minority groups who are veterans are included as subjects of such research.

(2) In the case of a project of clinical research in which women or members of minority groups will under paragraph (1) be included as subjects of the research, the Secretary shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.

(d)(1) The Secretary, in carrying out the Secretary's responsibilities under this section, shall foster and encourage the initiation and expansion of research relating to the health of veterans who are women.

(2) In carrying out this subsection, the Secretary shall consult with the following to assist the Secretary in setting research priorities:

(A) Officials of the Department assigned responsibility for women's health programs and sexual trauma services.

(B) The members of the Advisory Committee on Women Veterans.

(C) Members of appropriate task forces and working groups within the Department (including the Women Veterans Working Group and the Task Force on Treatment of Women Who Suffer Sexual Abuse).

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 211; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-452, title I, § 102(a), (b)(1), Nov. 2, 1994, 108 Stat. 4785, 4786; Pub. L. 105-220, title IV, § 414(c), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 107-135, title II, § 205(a), Jan. 23, 2002, 115 Stat. 2460; Pub. L. 108-170, title IV, § 401(b), Dec. 6, 2003, 117 Stat. 2061.)

REFERENCES IN TEXT

Section 204(b)(3) of the Rehabilitation Act of 1973, referred to in subsec. (b), is classified to section 764(b)(3) of Title 29, Labor.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108-170 struck out subsec. (e) which read as follows: "Amounts for the activities of the field offices of the Office of Research Compliance

and Assurance of the Department shall be derived from amounts appropriated for the Veterans Health Administration for Medical Care (rather than from amounts appropriated for the Veterans Health Administration for Medical and Prosthetic Research)."

2002—Subsec. (e). Pub. L. 107-135 added subsec. (e).

1998—Subsec. (b). Pub. L. 105-220 substituted "section 204(b)(3) of the Rehabilitation Act of 1973" for "section 204(b)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 762(b)(2))".

1994—Pub. L. 103-452 transferred text of subsec. (c) to the end of subsec. (a)(1), struck out subsec. (c) designation, and added new subsecs. (c) and (d).

1992—Subsec. (b). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

APPLICABILITY TO FISCAL YEAR 2002

Pub. L. 107-135, title II, § 205(b), Jan. 23, 2002, 115 Stat. 2460, related to transfer of appropriations for fiscal year 2002 to carry out subsec. (e) of this section for that fiscal year.

POST-TRAUMATIC STRESS DISORDER RESEARCH

Section 122(a) of Pub. L. 102-405 provided that: "In carrying out research and awarding grants under chapter 73 of title 38, United States Code, the Secretary shall assign a high priority to the conduct of research on mental illness, including research regarding (1) post-traumatic stress disorder, (2) post-traumatic stress disorder in association with substance abuse, and (3) the treatment of those disorders."

RESEARCH RELATING TO WOMEN VETERANS' HEALTH

Pub. L. 102-585, title I, § 109, Nov. 4, 1992, 106 Stat. 4948, provided for initiation and expansion of research relating to health of women veterans and authorization of appropriations for fiscal years 1993 through 1995 to carry out such studies, prior to repeal by Pub. L. 103-452, title I, § 102(b)(2), Nov. 2, 1994, 108 Stat. 4786.

§ 7304. Regulations

(a) Unless specifically otherwise provided, the Under Secretary for Health shall prescribe all regulations necessary to the administration of the Veterans Health Administration, including regulations relating to—

- (1) travel, transportation of household goods and effects, and deductions from pay for quarters and subsistence; and
- (2) the custody, use, and preservation of the records, papers, and property of the Administration.

(b) Regulations prescribed by the Under Secretary for Health are subject to the approval of the Secretary.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in subsecs. (a) and (b).

§ 7305. Divisions of Veterans Health Administration

The Veterans Health Administration shall include the following:

- (1) The Office of the Under Secretary for Health.
- (2) A Medical Service.
- (3) A Dental Service.
- (4) A Podiatric Service.

(5) An Optometric Service.

(6) A Nursing Service.

(7) Such other professional and auxiliary services as the Secretary may find to be necessary to carry out the functions of the Administration.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Par. (1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

§ 7306. Office of the Under Secretary for Health

(a) The Office of the Under Secretary for Health shall consist of the following:

(1) The Deputy Under Secretary for Health, who shall be the principal assistant of the Under Secretary for Health and who shall be a qualified doctor of medicine.

(2) The Associate Deputy Under Secretary for Health, who shall be an assistant to the Under Secretary for Health and the Deputy Under Secretary for Health and who shall be a qualified doctor of medicine.

(3) Not to exceed eight Assistant Under Secretaries for Health.

(4) Such Medical Directors as may be appointed to suit the needs of the Department, who shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.

(5) A Director of Nursing Service, who shall be a qualified registered nurse and who shall be responsible to, and report directly to, the Under Secretary for Health for the operation of the Nursing Service.

(6) A Director of Pharmacy Service, a Director of Dietetic Service, a Director of Podiatric Service, and a Director of Optometric Service, who shall be responsible to the Under Secretary for Health for the operation of their respective Services.

(7) Such directors of such other professional or auxiliary services as may be appointed to suit the needs of the Department, who shall be responsible to the Under Secretary for Health for the operation of their respective services.

(8) The Director of the National Center for Preventive Health, who shall be responsible to the Under Secretary for Health for the operation of the Center.

(9) The Director of Physician Assistant Services, who shall—

(A) serve in a full-time capacity at the Central Office of the Department;

(B) be a qualified physician assistant; and

(C) be responsible and report directly to the Chief Patient Care Services Officer of the Veterans Health Administration on all matters relating to the education and training, employment, appropriate use, and optimal participation of physician assistants within the programs and initiatives of the Administration.

(10) Such other personnel as may be authorized by this chapter.

(b) Of the Assistant Under Secretaries for Health appointed under subsection (a)(3)—

(1) not more than two may be persons qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines;

(2) one shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Under Secretary for Health for the operation of the Dental Service; and

(3) one shall be a qualified physician trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Under Secretary for Health for evaluating all research, educational, and clinical health-care programs carried out in the Administration in the field of geriatrics and who shall serve as the principal advisor to the Under Secretary for Health with respect to such programs.

(c) Appointments under subsection (a) shall be made by the Secretary. In the case of appointments under paragraphs (1), (2), (3), (4), and (8) of that subsection, such appointments shall be made upon the recommendation of the Under Secretary for Health.

(d) Except as provided in subsection (e)—

(1) any appointment under this section shall be for a period of four years, with reappointment permissible for successive like periods,

(2) any such appointment or reappointment may be extended by the Secretary for a period not in excess of three years, and

(3) any person so appointed or reappointed or whose appointment or reappointment is extended shall be subject to removal by the Secretary for cause.

(e)(1) The Secretary may designate a member of the Chaplain Service of the Department as Director, Chaplain Service, for a period of two years, subject to removal by the Secretary for cause. Redesignation under this subsection may be made for successive like periods or for any period not exceeding two years.

(2) A person designated as Director, Chaplain Service, shall at the end of such person's period of service as Director revert to the position, grade, and status which such person held immediately before being designated Director, Chaplain Service, and all service as Director, Chaplain Service, shall be creditable as service in the former position.

(f) In organizing the Office and appointing persons to positions in the Office, the Under Secretary shall ensure that—

(1) the Office is staffed so as to provide the Under Secretary, through a designated clinician in the appropriate discipline in each instance, with expertise and direct policy guidance on—

(A) unique programs operated by the Administration to provide for the specialized treatment and rehabilitation of disabled veterans (including blind rehabilitation, care of spinal cord dysfunction, mental illness, and long-term care); and

(B) the programs established under section 1712A of this title; and

(2) with respect to the programs established under section 1712A of this title, a clinician with appropriate expertise in those programs is responsible to the Under Secretary for the management of those programs.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102-405, title II, § 205, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 102-585, title V, § 511(b), Nov. 4, 1992, 106 Stat. 4956; Pub. L. 103-446, title XII, § 1201(c)(3), Nov. 2, 1994, 108 Stat. 4683; Pub. L. 104-262, title III, § 344, Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-419, title II, § 206, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 107-135, title I, § 131, Jan. 23, 2002, 115 Stat. 2454; Pub. L. 111-163, title V, § 514(a), May 5, 2010, 124 Stat. 1165.)

AMENDMENTS

2010—Subsec. (a)(9). Pub. L. 111-163 added par. (9) and struck out former par. (9) which read as follows: “The Advisor on Physician Assistants, who shall be a physician assistant with appropriate experience and who shall advise the Under Secretary for Health on all matters relating to the utilization and employment of physician assistants in the Administration.”

2002—Subsec. (a)(5). Pub. L. 107-135 inserted “, and report directly to,” after “responsible to”.

2000—Subsec. (a)(9), (10). Pub. L. 106-419 added par. (9) and redesignated former par. (9) as (10).

1996—Subsec. (f). Pub. L. 104-262 added subsec. (f).

1994—Subsec. (a)(3). Pub. L. 103-446, § 1201(c)(3)(A)(i), substituted “Assistant Under Secretaries for Health” for “Assistant Chief Medical Directors”.

Pars. (7) to (9). Pub. L. 103-446, § 1201(c)(3)(A)(ii)-(iv), redesignated par. (8), relating to such directors, as (7), par. (7) as (8), and par. (8), relating to such other personnel, as (9), and in par. (8), as so redesignated, substituted “Under Secretary for Health” for “Chief Medical Director”.

Subsec. (b). Pub. L. 103-446, § 1201(c)(3)(B), substituted “Assistant Under Secretaries for Health” for “Assistant Chief Medical Directors”.

Subsec. (c). Pub. L. 103-446, § 1201(c)(3)(C), substituted “and (8)” for “and (7)”.

1992—Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in section catchline.

Subsec. (a). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

Subsec. (a)(7). Pub. L. 102-585, § 511(b)(1)(B), added par. (7). Former par. (7), relating to such directors, redesignated (8).

Pub. L. 102-405, § 205(2), added par. (7). Former par. (7), relating to such other personnel, redesignated (8).

Subsec. (a)(8). Pub. L. 102-585, § 511(b)(1)(A), redesignated par. (7), relating to such directors, as (8).

Pub. L. 102-405, § 205(1), redesignated par. (7), relating to such other personnel, as (8).

Subsec. (b)(2), (3). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

Subsec. (c). Pub. L. 102-585, § 511(b)(2), substituted “(4), and (7)” for “and (4)”.

Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director”.

DEADLINE FOR IMPLEMENTATION OF 2010 AMENDMENT

Pub. L. 111-163, title V, § 514(b), May 5, 2010, 124 Stat. 1165, provided that: “The Secretary of Veterans Affairs shall ensure that an individual is serving as the Director of Physician Assistant Services under paragraph (9) of section 7306(a) of title 38, United States Code, as amended by subsection (a), by not later than 120 days after the date of the enactment of this Act [May 5, 2010].”

§ 7307. Office of Research Oversight

(a) REQUIREMENT FOR OFFICE.—(1) There is in the Veterans Health Administration an Office of Research Oversight (hereinafter in this section referred to as the “Office”). The Office shall ad-

vise the Under Secretary for Health on matters of compliance and assurance in human subjects protections, research safety, and research impropriety and misconduct. The Office shall function independently of entities within the Veterans Health Administration with responsibility for the conduct of medical research programs.

(2) The Office shall—

(A) monitor, review, and investigate matters of medical research compliance and assurance in the Department with respect to human subjects protections; and

(B) monitor, review, and investigate matters relating to the protection and safety of human subjects and Department employees participating in medical research in Department programs.

(b) DIRECTOR.—(1) The head of the Office shall be a Director, who shall report directly to the Under Secretary for Health (without delegation).

(2) Any person appointed as Director shall be—

(A) an established expert in the field of medical research, administration of medical research programs, or similar fields; and

(B) qualified to carry out the duties of the Office based on demonstrated experience and expertise.

(c) FUNCTIONS.—(1) The Director shall report to the Under Secretary for Health on matters relating to protections of human subjects in medical research projects of the Department under any applicable Federal law and regulation, the safety of employees involved in Department medical research programs, and suspected misconduct and impropriety in such programs. In carrying out the preceding sentence, the Director shall consult with employees of the Veterans Health Administration who are responsible for the management and conduct of Department medical research programs.

(2) The matters to be reported by the Director to the Under Secretary under paragraph (1) shall include allegations of research impropriety and misconduct by employees engaged in medical research programs of the Department.

(3)(A) When the Director determines that such a recommendation is warranted, the Director may recommend to the Under Secretary that a Department research activity be terminated, suspended, or restricted, in whole or in part.

(B) In a case in which the Director reasonably believes that activities of a medical research project of the Department place human subjects' lives or health at imminent risk, the Director shall direct that activities under that project be immediately suspended or, as appropriate and specified by the Director, be limited.

(d) GENERAL FUNCTIONS.—(1) The Director shall conduct periodic inspections and reviews, as the Director determines appropriate, of medical research programs of the Department. Such inspections and reviews shall include review of required documented assurances.

(2) The Director shall observe external accreditation activities conducted for accreditation of medical research programs conducted in facilities of the Department.

(3) The Director shall investigate allegations of research impropriety and misconduct in medical research projects of the Department.

(4) The Director shall submit to the Under Secretary for Health, the Secretary, and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on any suspected lapse, from whatever cause or causes, in protecting safety of human subjects and others, including employees, in medical research programs of the Department.

(5) The Director shall carry out such other duties as the Under Secretary for Health may require.

(e) SOURCE OF FUNDS.—Amounts for the activities of the Office, including its regional offices, shall be derived from amounts appropriated for the Veterans Health Administration for Medical Care.

(f) ANNUAL REPORT.—Not later than March 15 each year, the Director shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the activities of the Office during the preceding calendar year. Each such report shall include, with respect to that year, the following:

(1) A summary of reviews of individual medical research programs of the Department completed by the Office.

(2) Directives and other communications issued by the Office to field activities of the Department.

(3) Results of any investigations undertaken by the Office during the reporting period consonant with the purposes of this section.

(4) Other information that would be of interest to those committees in oversight of the Department medical research program.

(g) MEDICAL RESEARCH.—For purposes of this section, the term "medical research" means medical research described in section 7303(a)(2) of this title.

(Added Pub. L. 108-170, title IV, § 401(a)(1), Dec. 6, 2003, 117 Stat. 2059.)

§ 7308. Office of Rural Health

(a) ESTABLISHMENT.—There is established in the Department within the Office of the Under Secretary for Health an office to be known as the "Office of Rural Health" (in this section referred to as the "Office").

(b) HEAD.—The Director of the Office of Rural Health shall be the head of the Office. The Director of the Office of Rural Health shall be appointed by the Under Secretary of Health from among individuals qualified to perform the duties of the position.

(c) FUNCTIONS.—The functions of the Office are as follows:

(1) In cooperation with the medical, rehabilitation, health services, and cooperative studies research programs in the Office of Policy and the Office of Research and Development of the Veterans Health Administration, to assist the Under Secretary for Health in conducting, coordinating, promoting, and disseminating research into issues affecting veterans living in rural areas.

(2) To work with all personnel and offices of the Department of Veterans Affairs to develop, refine, and promulgate policies, best practices, lessons learned, and innovative and successful programs to improve care and serv-

ices for veterans who reside in rural areas of the United States.

(3) To designate in each Veterans Integrated Service Network (VISN) an individual who shall consult on and coordinate the discharge in such Network of programs and activities of the Office for veterans who reside in rural areas of the United States.

(4) To perform such other functions and duties as the Secretary or the Under Secretary for Health considers appropriate.

(Added Pub. L. 109-461, title II, §212(a)(1), Dec. 22, 2006, 120 Stat. 3421.)

SUBCHAPTER II—GENERAL AUTHORITY AND ADMINISTRATION

PRIOR PROVISIONS

A prior subchapter II of this chapter consisting of sections 4121 to 4124, related to Regional Medical Education Centers, prior to repeal by Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 210. See Prior Provisions notes set out under section 4110A of this title.

§ 7311. Quality assurance

(a) The Secretary shall—

(1) establish and conduct a comprehensive program to monitor and evaluate the quality of health care furnished by the Veterans Health Administration (hereinafter in this section referred to as the “quality-assurance program”); and

(2) delineate the responsibilities of the Under Secretary for Health with respect to the quality-assurance program, including the duties prescribed in this section.

(b)(1) As part of the quality-assurance program, the Under Secretary for Health shall periodically evaluate—

(A) whether there are significant deviations in mortality and morbidity rates for surgical procedures performed by the Administration from prevailing national mortality and morbidity standards for similar procedures; and

(B) if there are such deviations, whether they indicate deficiencies in the quality of health care provided by the Administration.

(2) The evaluation under paragraph (1)(A) shall be made using the information compiled under subsection (c)(1). The evaluation under paragraph (1)(B) shall be made taking into account the factors described in subsection (c)(2)(B).

(3) If, based upon an evaluation under paragraph (1)(A), the Under Secretary for Health determines that there is a deviation referred to in that paragraph, the Under Secretary for Health shall explain the deviation in the report submitted under subsection (f).¹

(4) As part of the quality-assurance program, the Under Secretary for Health shall establish mechanisms through which employees of Veterans Health Administration facilities may submit reports, on a confidential basis, on matters relating to quality of care in Veterans Health Administration facilities to the quality management officers of such facilities under section 7311A(c) of this title. The mechanisms shall provide for the prompt and thorough review of any reports so submitted by the receiving officials.

(c)(1) The Under Secretary for Health shall—

(A) determine the prevailing national mortality and morbidity standards for each type of surgical procedure performed by the Administration; and

(B) collect data and other information on mortality and morbidity rates in the Administration for each type of surgical procedure performed by the Administration and (with respect to each such procedure) compile the data and other information so collected—

(i) for each medical facility of the Department, in the case of cardiac surgery, heart transplant, and renal transplant programs; and

(ii) in the aggregate, for each other type of surgical procedure.

(2) The Under Secretary for Health shall—

(A) compare the mortality and morbidity rates compiled under paragraph (1)(B) with the national mortality and morbidity standards determined under paragraph (1)(A); and

(B) analyze any deviation between such rates and such standards in terms of the following:

(i) The characteristics of the respective patient populations.

(ii) The level of risk for the procedure involved, based on—

(I) patient age;

(II) the type and severity of the disease;

(III) the effect of any complicating diseases; and

(IV) the degree of difficulty of the procedure.

(iii) Any other factor that the Under Secretary for Health considers appropriate.

(d) Based on the information compiled and the comparisons, analyses, evaluations, and explanations made under subsections (b) and (c), the Under Secretary for Health, in the report under subsection (f),¹ shall make such recommendations with respect to quality assurance as the Under Secretary for Health considers appropriate.

(e)(1) The Secretary shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Administration to carry out its responsibilities under this section.

(2) The Inspector General of the Department shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Inspector General to monitor the quality-assurance program.

(Added Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 214; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(g)(5), Nov. 2, 1994, 108 Stat. 4687; Pub. L. 111-163, title V, §505(b), May 5, 2010, 124 Stat. 1159.)

REFERENCES IN TEXT

Subsection (f), referred to in subsecs. (b)(3) and (d), was repealed by Pub. L. 103-446, title XII, §1201(g)(5), Nov. 2, 1994, 108 Stat. 4687.

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111-163 added par. (4).

1994—Subsecs. (f), (g). Pub. L. 103-446 struck out subsecs. (f) and (g) which read as follows:

¹ See References in Text note below.

“(f)(1) Not later than February 1, 1991, the Under Secretary for Health shall submit to the Secretary a report on the experience through the end of the preceding fiscal year under the quality-assurance program carried out under this section.

“(2) Such report shall include—

“(A) the data and other information compiled and the comparisons, analyses, and evaluations made under subsections (b) and (c) with respect to the period covered by the report; and

“(B) recommendations under subsection (d).

“(g)(1) Not later than 60 days after receiving such report, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comment concerning the report that the Secretary considers appropriate.

“(2) A report submitted under paragraph (1) shall not be considered to be a record or document as described in section 5705(a) of this title.”

1992—Subsecs. (a) to (d), (f). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

COMPREHENSIVE POLICY ON PAIN MANAGEMENT

Pub. L. 110-387, title V, §501, Oct. 10, 2008, 122 Stat. 4130, provided that:

“(a) COMPREHENSIVE POLICY REQUIRED.—Not later than October 1, 2009, the Secretary of Veterans Affairs shall develop and implement a comprehensive policy on the management of pain experienced by veterans enrolled for health care services provided by the Department of Veterans Affairs.

“(b) SCOPE OF POLICY.—The policy required by subsection (a) shall cover each of the following:

“(1) The Department-wide management of acute and chronic pain experienced by veterans.

“(2) The standard of care for pain management to be used throughout the Department.

“(3) The consistent application of pain assessments to be used throughout the Department.

“(4) The assurance of prompt and appropriate pain care treatment and management by the Department, system-wide, when medically necessary.

“(5) Department programs of research related to acute and chronic pain suffered by veterans, including pain attributable to central and peripheral nervous system damage characteristic of injuries incurred in modern warfare.

“(6) Department programs of pain care education and training for health care personnel of the Department.

“(7) Department programs of patient education for veterans suffering from acute or chronic pain and their families.

“(c) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.

“(d) CONSULTATION.—The Secretary shall develop the policy required by subsection (a), and revise such policy under subsection (c), in consultation with veterans service organizations and organizations with expertise in the assessment, diagnosis, treatment, and management of pain.

“(e) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than 180 days after the date of the completion and initial implementation of the policy required by subsection (a) and on October 1 of every fiscal year thereafter through fiscal year 2018, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the implementation of the policy required by subsection (a).

“(2) CONTENTS.—The report required by paragraph (1) shall include the following:

“(A) A description of the policy developed and implemented under subsection (a) and any revisions to such policy under subsection (c).

“(B) A description of the performance measures used to determine the effectiveness of such policy in improving pain care for veterans system-wide.

“(C) An assessment of the adequacy of Department pain management services based on a survey of patients managed in Department clinics.

“(D) An assessment of the research projects of the Department relevant to the treatment of the types of acute and chronic pain suffered by veterans.

“(E) An assessment of the training provided to Department health care personnel with respect to the diagnosis, treatment, and management of acute and chronic pain.

“(F) An assessment of the patient pain care education programs of the Department.

“(f) VETERANS SERVICE ORGANIZATION DEFINED.—In this section, the term ‘veterans service organization’ means any organization recognized by the Secretary for the representation of veterans under section 5902 of title 38, United States Code.”

EVALUATION OF DEPARTMENT OF VETERANS AFFAIRS NURSE MANAGED CLINICS

Pub. L. 107-135, title I, §123, Jan. 23, 2002, 115 Stat. 2451, required the Secretary of Veterans Affairs to evaluate the efficacy of the nurse managed health care clinics of the Department of Veterans Affairs and submit to Congress a report on the evaluation not later than 18 months after Jan. 23, 2002.

QUALITY ASSURANCE ACTIVITIES

Section 104 of Pub. L. 102-405 provided that: “Effective on October 1, 1992, programs and activities which (1) the Secretary carries out pursuant to section 7311(a) of title 38, United States Code, or (2) are described in sections 201(a)(1) and 201(a)(3) of Public Law 100-322 [formerly set out as a note under former section 4151 of this title] (102 Stat. 508) shall be deemed to be part of the operation of hospitals, nursing homes, and domiciliary facilities of the Department of Veterans Affairs, without regard to the location of the duty stations of employees carrying out those programs and activities.”

REGULATIONS FOR STANDARDS OF PERFORMANCE IN LABORATORIES

Pub. L. 102-139, title I, §101, Oct. 28, 1991, 105 Stat. 742, provided that:

“(a) REGULATIONS FOR STANDARDS OF PERFORMANCE IN DEPARTMENT OF VETERANS AFFAIRS LABORATORIES.—(1) Within the 120-day period beginning on the date on which the Secretary of Health and Human Services promulgates final regulations to implement the standards required by section 353 of the Public Health Service Act (42 U.S.C. 263a), the Secretary of Veterans Affairs, in accordance with the Secretary's authority under title 38, United States Code, shall prescribe regulations to assure consistent performance by medical facility laboratories under the jurisdiction of the Secretary of valid and reliable laboratory examinations and other procedures. Such regulations shall be prescribed in consultation with the Secretary of Health and Human Services and shall establish standards equal to that applicable to other medical facility laboratories in accordance with the requirements of section 353(f) of the Public Health Service Act.

“(2) Such regulations—

“(A) may include appropriate provisions respecting waivers described in section 353(d) of such Act and accreditations described in section 353(e) of such Act; and

“(B) shall include appropriate provisions respecting compliance with such requirements.

“(b) REPORT.—Within the 180-day period beginning on the date on which the Secretary of Veterans Affairs prescribes regulations required by subsection (a), the Secretary shall submit to the appropriate committees of the Congress a report on those regulations.

“(c) DEFINITION.—As used in this section, the term ‘medical facility laboratories’ means facilities for the

biological, micro-biological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other physical examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.”

§ 7311A. Quality management officers

(a) NATIONAL QUALITY MANAGEMENT OFFICER.—(1) The Under Secretary for Health shall designate an official of the Veterans Health Administration to act as the principal quality management officer for the quality-assurance program required by section 7311 of this title. The official so designated may be known as the “National Quality Management Officer of the Veterans Health Administration” (in this section referred to as the “National Quality Management Officer”).

(2) The National Quality Management Officer shall report directly to the Under Secretary for Health in the discharge of responsibilities and duties of the Officer under this section.

(3) The National Quality Management Officer shall be the official within the Veterans Health Administration who is principally responsible for the quality-assurance program referred to in paragraph (1). In carrying out that responsibility, the Officer shall be responsible for the following:

(A) Establishing and enforcing the requirements of the program referred to in paragraph (1).

(B) Developing an aggregate quality metric from existing data sources, such as the Inpatient Evaluation Center of the Department, the National Surgical Quality Improvement Program, and the External Peer Review Program of the Veterans Health Administration, that could be used to assess reliably the quality of care provided at individual Department medical centers and associated community based outpatient clinics.

(C) Ensuring that existing measures of quality, including measures from the Inpatient Evaluation Center, the National Surgical Quality Improvement Program, System-Wide Ongoing Assessment and Review reports of the Department, and Combined Assessment Program reviews of the Office of Inspector General of the Department, are monitored routinely and analyzed in a manner that ensures the timely detection of quality of care issues.

(D) Encouraging research and development in the area of quality metrics for the purposes of improving how the Department measures quality in individual facilities.

(E) Carrying out such other responsibilities and duties relating to quality management in the Veterans Health Administration as the Under Secretary for Health shall specify.

(4) The requirements under paragraph (3) shall include requirements regarding the following:

(A) A confidential system for the submittal of reports by Veterans Health Administration personnel regarding quality management at Department facilities.

(B) Mechanisms for the peer review of the actions of individuals appointed in the Veterans Health Administration in the position of physician.

(b) QUALITY MANAGEMENT OFFICERS FOR VISNS.—(1) The Regional Director of each Veterans Integrated Services Network shall appoint an official of the Network to act as the quality management officer of the Network.

(2) The quality management officer for a Veterans Integrated Services Network shall report to the Regional Director of the Veterans Integrated Services Network, and to the National Quality Management Officer, regarding the discharge of the responsibilities and duties of the officer under this section.

(3) The quality management officer for a Veterans Integrated Services Network shall—

(A) direct the quality management office in the Network; and

(B) coordinate, monitor, and oversee the quality management programs and activities of the Administration medical facilities in the Network in order to ensure the thorough and uniform discharge of quality management requirements under such programs and activities throughout such facilities.

(c) QUALITY MANAGEMENT OFFICERS FOR MEDICAL FACILITIES.—(1) The director of each Veterans Health Administration medical facility shall appoint a quality management officer for that facility.

(2) The quality management officer for a facility shall report directly to the director of the facility, and to the quality management officer of the Veterans Integrated Services Network in which the facility is located, regarding the discharge of the responsibilities and duties of the quality management officer under this section.

(3) The quality management officer for a facility shall be responsible for designing, disseminating, and implementing quality management programs and activities for the facility that meet the requirements established by the National Quality Management Officer under subsection (a).

(d) AUTHORIZATION OF APPROPRIATIONS.—(1) Except as provided in paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section.

(2) There is authorized to be appropriated to carry out the provisions of subparagraphs (B), (C), and (D) of subsection (a)(3), \$25,000,000 for the two-year period of fiscal years beginning after the date of the enactment of this section.

(Added Pub. L. 111-163, title V, § 505(a)(1), May 5, 2010, 124 Stat. 1158.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 111-163, which was approved May 5, 2010.

§ 7312. Special medical advisory group

(a) The Secretary shall establish an advisory committee to be known as the special medical advisory group. The advisory group shall advise the Secretary, through the Under Secretary for Health, and the Under Secretary for Health directly, relative to the care and treatment of disabled veterans and other matters pertinent to the Administration.

(b) Members of the special medical advisory group shall be appointed by the Secretary upon

the recommendation of the Under Secretary for Health. The special medical advisory group shall be composed of—

- (1) members of the medical, dental, podiatric, optometric, and allied scientific professions;
- (2) other individuals considered by the Under Secretary for Health to have experience pertinent to the mission of the Administration; and
- (3) a disabled veteran.

(c) The special medical advisory group shall meet on a regular basis as prescribed by the Secretary. The number, terms of service, pay, and allowances of members of the advisory group shall be prescribed in accordance with existing law and regulations.

(d) Not later than February 1 of each year, the special medical advisory group shall submit to the Secretary and the Congress a report on the activities of the advisory group during the preceding fiscal year. No report shall be required under this subsection after December 31, 2004.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 215; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, § 1201(e)(20), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 106-419, title IV, § 403(c)(5), Nov. 1, 2000, 114 Stat. 1864.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-419 inserted at end “No report shall be required under this subsection after December 31, 2004.”

1994—Subsec. (d). Pub. L. 103-446 substituted “the activities of the advisory group” for “the advisory groups activities”.

1992—Subsecs. (a), (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

§ 7313. Advisory committees: affiliated institutions

(a) In each case where the Secretary has a contract or agreement with any school, institution of higher learning, medical center, hospital, or other public or nonprofit agency, institution, or organization for the training or education of health personnel, the Secretary shall establish an advisory committee to advise the Secretary and the Under Secretary for Health with respect to policy matters arising in connection with, and the operation of, the program with respect to which it was appointed. Such a committee may be a dean's committee, a medical advisory committee, or the like.

(b) Any such advisory committee may be established on an institution-wide, multi-disciplinary basis or on a regional basis whenever establishment on such a basis is found to be feasible.

(c) Members of each such advisory committee shall be appointed by the Secretary and shall include personnel of the Department (including appropriate representation from the full-time staff) and of the entity with which the Secretary has entered into the contract or agreement. The number of members, and terms of members, of each advisory committee shall be prescribed by the Secretary.

(d) The Secretary shall require that the Chief of the Nursing Service (or the designee of the Chief) at each Department health-care facility

be included in the membership of each policy-making committee at that facility. Such committees include: (1) committees relating to matters such as budget, education, position management, clinical executive issues, planning, and resource allocation, and (2) the dean's committee or other advisory committee established under subsection (a).

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 216; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

§ 7314. Geriatric research, education, and clinical centers

(a) The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to the provisions of this section, shall designate not more than 25 Department health-care facilities as the locations for centers of geriatric research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this section.

(b) In designating locations for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall—

- (1) designate each Department health-care facility that as of August 26, 1980, was operating a geriatric research, education, and clinical center unless (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility does not meet the requirements of subsection (c) or has not demonstrated effectiveness in carrying out the established purposes of such center or the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980 (Public Law 96-330; 94 Stat. 1048) or the potential to carry out such purposes effectively in the reasonably foreseeable future; and

- (2) assure appropriate geographic distribution of such facilities.

(c) The Secretary may not designate a health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals which have met the highest competitive standards of scientific and clinical merit, and the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

- (1) An arrangement with an accredited medical school which provides education and training in geriatrics and with which such facility is affiliated under which residents receive education and training in geriatrics through regular rotation through such center and through nursing home, extended care, or domiciliary units of such facility so as to provide such residents with training in the diagnosis and

treatment of chronic diseases of older individuals, including cardiopulmonary conditions, senile dementia, and neurological disorders.

(2) An arrangement under which nursing or allied health personnel receive training and education in geriatrics through regular rotation through nursing home, extended care, or domiciliary units of such facility.

(3) The ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts.

(4) A policymaking advisory committee composed of appropriate health-care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center.

(5) The capability to conduct effectively evaluations of the activities of such center.

(d)(1) In order to provide advice to assist the Secretary and the Under Secretary for Health in carrying out their responsibilities under this section, the Assistant Under Secretary for Health described in section 7306(b)(3) of this title shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of new centers under this section.

(2) The membership of the panel shall consist of experts in the fields of geriatric and gerontological research, education, and clinical care. Members of the panel shall serve as consultants to the Department for a period of no longer than six months.

(3) The panel shall review each proposal submitted to the panel by the Assistant Under Secretary and shall submit its views on the relative scientific and clinical merit of each such proposal to the Assistant Under Secretary.

(4) The panel shall not be subject to the Federal Advisory Committee Act.

(e) Before providing funds for the operation of any such center at a health-care facility other than a health-care facility designated under subsection (b)(1), the Secretary shall assure that the center at each facility designated under such subsection is receiving adequate funding to enable such center to function effectively in the areas of geriatric research, education, and clinical activities.

(f) There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in geriatrics and gerontology.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 216; amended Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title V, § 521, Nov. 4, 1992, 106 Stat. 4958; Pub. L. 103-446, title XII, §§ 1201(c)(4), 1202(b)(2), Nov. 2, 1994, 108 Stat. 4683, 4689; Pub. L. 110-387, title IX, § 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

REFERENCES IN TEXT

The Veterans' Administration Health-Care Amendments of 1980, referred to in subsec. (b)(1), is Pub. L. 96-330, Aug. 26, 1980, 94 Stat. 1030. Title III of the Act amended former sections 4101 and 4103 of this title and enacted provisions set out as notes below and under former section 4101 of this title. For the purposes of title III, see section 301 of Pub. L. 96-330, set out below. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (d)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110-387 substituted “medical services account” for “medical care account”.

1994—Subsec. (b)(1). Pub. L. 103-446, § 1202(b)(2), amended Pub. L. 102-83, § 4(a)(3), (4), to make it inapplicable to this section. See 1991 Amendment note below.

Subsec. (d)(1). Pub. L. 103-446, § 1201(c)(4)(A), substituted “the Secretary and the Under Secretary for Health in carrying out” for “the Chief Medical Director and the Secretary to carry out” and “the Assistant Under Secretary for Health described in section 7306(b)(3)” for “the Assistant Chief Medical Director described in section 7306(b)(3)”.

Subsec. (d)(3). Pub. L. 103-446, § 1201(c)(4)(B), substituted “Assistant Under Secretary” for “Assistant Chief Medical Director” in two places.

1992—Subsecs. (a), (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

Subsec. (c). Pub. L. 102-585, § 521(1), inserted “the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals which have met the highest competitive standards of scientific and clinical merit, and” after “unless” in introductory provisions.

Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in introductory provisions.

Subsec. (d). Pub. L. 102-585, § 521(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 102-585, § 521(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

Subsecs. (f), (g). Pub. L. 102-585, § 521(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1991—Subsec. (b)(1). Pub. L. 102-83, § 4(a)(3), (4), which directed substitution of “Department” for “Veterans' Administration”, was amended by Pub. L. 103-446, § 1202(b)(2), to make it inapplicable to this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1202(b) of Pub. L. 103-446 provided that the amendment made by that section is effective Aug. 6, 1991, and as if included in the enactment of Pub. L. 102-83.

CONGRESSIONAL DECLARATION OF PURPOSE IN CREATING CENTERS OF GERIATRIC RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES

Section 301 of title III of Pub. L. 96-330 provided that: “The purposes of this title [see Tables for classifica-

tion] are (1) to improve and expand the capability of Veterans' Administration [now Department of Veterans Affairs] health-care facilities to respond with the most effective and appropriate services possible to the medical, psychological and social needs of the increasing number of older veterans, and (2) to advance scientific knowledge regarding such needs and the methods of meeting them by facilitating higher quality geriatric care for eligible older veterans through geriatric and gerontological research, the training of health personnel in the provision of health care to older individuals, and the development of improved models of clinical services for eligible older veterans."

§ 7315. Geriatrics and Gerontology Advisory Committee

(a) The Secretary shall establish in the Veterans Health Administration a Geriatrics and Gerontology Advisory Committee (hereinafter in this section referred to as the "Committee"). The membership of the Committee shall be appointed by the Secretary, upon the recommendation of the Under Secretary for Health, and shall include individuals who are not employees of the Federal Government and who have demonstrated interest and expertise in research, education, and clinical activities related to aging and at least one representative of a national veterans service organization. The Secretary, upon the recommendation of the Under Secretary for Health, shall invite representatives of other appropriate departments and agencies of the United States to participate in the activities of the Committee and shall provide the Committee with such staff and other support as may be necessary for the Committee to carry out effectively its functions under this section.

(b) The Committee shall—

(1) advise the Under Secretary for Health on all matters pertaining to geriatrics and gerontology;

(2) assess, through an evaluation process (including a site visit conducted not later than three years after the date of the establishment of each new center and not later than two years after the date of the last evaluation of those centers in operation on August 26, 1980), the ability of each center established under section 7314 of this title to achieve its established purposes and the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980 (Public Law 96-330; 94 Stat. 1048);

(3) assess the capability of the Department to provide high quality geriatric services, extended services, and other health-care services to eligible older veterans, taking into consideration the likely demand for such services from such veterans;

(4) assess the current and projected needs of eligible older veterans for geriatric services, extended-care services, and other health-care services from the Department and its activities and plans designed to meet such needs; and

(5) perform such additional functions as the Secretary or Under Secretary for Health may direct.

(c)(1) The Committee shall submit to the Secretary, through the Under Secretary for Health, such reports as the Committee considers appro-

priate with respect to its findings and conclusions under subsection (b). Such reports shall include the following:

(A) Descriptions of the operations of the centers of geriatric research, education, and clinical activities established pursuant to section 7314 of this title.

(B) Assessments of the quality of the operations of such centers.

(C) An assessment of the extent to which the Department, through the operation of such centers and other health-care facilities and programs, is meeting the needs of eligible older veterans for geriatric services, extended-care services, and other health-care services.

(D) Assessments of and recommendations for correcting any deficiencies in the operations of such centers.

(E) Recommendations for such other geriatric services, extended-care services, and other health-care services as may be needed to meet the needs of older veterans.

(2) Whenever the Committee submits a report to the Secretary under paragraph (1), the Committee shall at the same time transmit a copy of the report in the same form to the appropriate committees of Congress. Not later than 90 days after receipt of a report under that paragraph, the Secretary shall submit to the appropriate committees of Congress a report containing any comments and recommendations of the Secretary with respect to the report of the Committee.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 217; amended Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 102-405, title I, § 102, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1973, 1984; Pub. L. 103-446, title XII, §§ 1201(i)(9), 1202(b)(2), Nov. 2, 1994, 108 Stat. 4688, 4689; Pub. L. 107-330, title III, § 308(g)(13), Dec. 6, 2002, 116 Stat. 2829.)

REFERENCES IN TEXT

The Veterans' Administration Health-Care Amendments of 1980, referred to in subsec. (b)(2), is Pub. L. 96-330, Aug. 26, 1980, 94 Stat. 1030. Title III of the Act amended former sections 4101 and 4103 of this title and enacted provisions set out as notes under former section 4101 of this title. For the purposes of title III, see section 301 of Pub. L. 96-330, set out as a note under section 7314 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of this title and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-330 inserted "Veterans Health" before "Administration" in first sentence.

1994—Subsec. (b)(2). Pub. L. 103-446, § 1201(i)(9), which directed substitution of "Veterans' Administration" for "Department", could not be executed because "Department" did not appear subsequent to execution of amendment by Pub. L. 103-446, § 1202(b)(2). See below.

Pub. L. 103-446, § 1202(b)(2), amended Pub. L. 102-83, § 4(a)(3), (4), to make it inapplicable to this section. See 1991 Amendment note below.

1992—Subsecs. (a), (b)(1), (5), (c)(1). Pub. L. 102-405, § 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

Subsec. (c)(2). Pub. L. 102-405, § 102, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Not later than 90 days after receipt of a report submitted under paragraph (1), the Secretary shall trans-

mit the report, together with the Secretary's comments and recommendations thereon, to the appropriate committees of the Congress."

1991—Subsec. (b)(2). Pub. L. 102-83, §4(a)(3), (4), which directed substitution of "Department" for "Veterans' Administration", was amended by Pub. L. 103-446, §1202(b)(2), to make it inapplicable to this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1202(b) of Pub. L. 103-446 provided that the amendment made by that section is effective Aug. 6, 1991, and as if included in the enactment of Pub. L. 102-83.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7316. Malpractice and negligence suits: defense by United States

(a)(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28, or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a health care employee of the Administration in furnishing health care or treatment while in the exercise of that employee's duties in or for the Administration shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the health care employee (or employee's estate) whose act or omission gave rise to such claim.

(2) For purposes of paragraph (1), the term "health care employee of the Administration" means a physician, dentist, podiatrist, chiropractor, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (such as medical and dental technicians, nursing assistants, and therapists), or other supporting personnel.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's employment in or for the Administration at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of such person's office or employment, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) The Secretary may, to the extent the Secretary considers appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of such person's duties in or for the Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Administration.

(Added Pub. L. 102-40, title IV, §401(a)(3), May 7, 1991, 105 Stat. 219; amended Pub. L. 108-170, title III, §302(e), Dec. 6, 2003, 117 Stat. 2058.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-170, §302(e)(1), substituted "health" for "medical" in three places in concluding provisions.

Subsec. (a)(2). Pub. L. 108-170, §302(e)(2), substituted "health" for "medical" the first place it appeared and inserted "chiropractor," after "podiatrist,".

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title III, §302(h), Dec. 6, 2003, 117 Stat. 2058, provided that: "The amendments made by this section [amending this section and sections 7401 to 7404, 7409, and 7421 of this title] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 6, 2003]."

§ 7317. Hazardous research projects: indemnification of contractors

(a)(1) With the approval of the Secretary, any contract or research authorized by section 7303 of this title, the performance of which involves a risk of an unusually hazardous nature, may provide that the United States will indemnify the contractor as provided in paragraph (2), but only to the extent that the liability, loss, or damage concerned arises out of the direct performance of the contract and to the extent not covered by the financial protection required under subsection (e).

(2) Indemnity under paragraph (1) is indemnity against either or both of the following:

(A) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal workers' injury compensation laws to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(B) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with subsection (a) must also provide for—

(1) notice to the United States of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of any such suit or claim for which indemnification is provided hereunder.

(c) A payment may not be made under subsection (a) unless the Secretary certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(e) Each contractor which is a party to an indemnification agreement under subsection (a) shall have and maintain financial protection of such type and in such amounts as the Secretary shall require to cover liability to third persons and loss of or damage to the contractor's property. The amount of financial protection required shall be the maximum amount of insurance available from private sources, except that the Secretary may establish a lesser amount, taking into consideration the cost and terms of private insurance. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures.

(f) In administering the provisions of this section, the Secretary may use the facilities and services of private insurance organizations and may contract to pay a reasonable compensation therefor. Any contract made under the provi-

sions of this section may be made without regard to the provisions of section 6101(b) to (d) of title 41, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made under any such contract.

(g) The authority to indemnify contractors under this section does not create any rights in third persons which would not otherwise exist by law.

(h) Funds appropriated to carry out this section shall remain available until expended.

(i) In this section, the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to subsection (a).

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 220; amended Pub. L. 111-350, § 5(j)(4), Jan. 4, 2011, 124 Stat. 3850.)

AMENDMENTS

2011—Subsec. (f). Pub. L. 111-350 substituted "section 6101(b) to (d) of title 41" for "section 3709 of the Revised Statutes (41 U.S.C. 5)".

§ 7318. National Center for Preventive Health

(a)(1) The Under Secretary for Health shall establish and operate in the Veterans Health Administration a National Center for Preventive Health (hereinafter in this section referred to as the "Center"). The Center shall be located at a Department health care facility.

(2) The head of the Center is the Director of Preventive Health (hereinafter in this section referred to as the "Director").

(3) The Under Secretary for Health shall provide the Center with such staff and other support as may be necessary for the Center to carry out effectively its functions under this section.

(b) The purposes of the Center are the following:

(1) To provide a central office for monitoring and encouraging the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of preventive health services.

(2) To promote the expansion and improvement of clinical, research, and educational activities of the Veterans Health Administration with respect to such services.

(c) In carrying out the purposes of the Center, the Director shall do the following:

(1) Develop and maintain current information on clinical activities of the Veterans Health Administration relating to preventive health services, including activities relating to—

(A) the on-going provision of regularly-furnished services; and

(B) patient education and screening programs carried out throughout the Administration.

(2) Develop and maintain detailed current information on research activities of the Veterans Health Administration relating to preventive health services.

(3) In order to encourage the effective provision of preventive health services by Veterans Health Administration personnel—

(A) ensure the dissemination to such personnel of any appropriate information on

such services that is derived from research carried out by the Administration; and

(B) acquire and ensure the dissemination to such personnel of any appropriate information on research and clinical practices relating to such services that are carried out by researchers, clinicians, and educators who are not affiliated with the Administration.

(4) Facilitate the optimal use of the unique resources of the Department for cooperative research into health outcomes by initiating recommendations, and responding to requests of the Under Secretary for Health and the Director of the Medical and Prosthetic Research Service, for such research into preventive health services.

(5) Provide advisory services to personnel of Department health-care facilities with respect to the planning or furnishing of preventive health services by such personnel.

(d) There is authorized to be appropriated \$1,500,000 to the Medical Care General and Special Fund of the Department of Veterans Affairs for each fiscal year for the purpose of permitting the National Center for Preventive Health to carry out research, clinical, educational, and administrative activities under this section. Such activities shall be considered to be part of the operation of health-care facilities of the Department without regard to the location at which such activities are carried out.

(e) In this section, the term "preventive health services" has the meaning given such term in section 1701(9) of this title.

(Added Pub. L. 102-585, title V, § 511(a)(1), Nov. 4, 1992, 106 Stat. 4955; amended Pub. L. 103-446, title XII, § 1201(c)(5), Nov. 2, 1994, 108 Stat. 4683.)

AMENDMENTS

1994—Subsecs. (a)(1), (3), (c)(4). Pub. L. 103-446 substituted "Under Secretary for Health" for "Chief Medical Director".

SELECTION OF FACILITY AT WHICH CENTER TO BE ESTABLISHED

Section 511(c) of Pub. L. 102-585, as amended by Pub. L. 103-446, title XII, § 1202(e)(2), Nov. 2, 1994, 108 Stat. 4689, provided that: "In order to establish the National Center for Preventive Health pursuant to section 7318 of title 38, United States Code, as added by subsection (a), the Under Secretary for Health of the Department of Veterans Affairs shall solicit proposals from Department health care facilities to establish the center. The Under Secretary for Health shall establish such center at the facility or facilities which the Under Secretary for Health determines, on the basis of a review and analysis of such proposals, would most effectively carry out the purposes set forth in subsection (b) of such section."

§ 7319. Mammography quality standards

(a) A mammogram may not be performed at a Department facility unless that facility is accredited for that purpose by a private nonprofit organization designated by the Secretary. An organization designated by the Secretary under this subsection shall meet the standards for accrediting bodies established under subsection (e) of section 354 of the Public Health Service Act (42 U.S.C. 263b).

(b) The Secretary, in consultation with the Secretary of Health and Human Services, shall prescribe quality assurance and quality control standards relating to the performance and interpretation of mammograms and use of mammogram equipment and facilities of the Department of Veterans Affairs consistent with the requirements of section 354(f)(1) of the Public Health Service Act. Such standards shall be no less stringent than the standards prescribed by the Secretary of Health and Human Services under section 354(f) of the Public Health Service Act.

(c)(1) The Secretary, to ensure compliance with the standards prescribed under subsection (b), shall provide for an annual inspection of the equipment and facilities used by and in Department health care facilities for the performance of mammograms. Such inspections shall be carried out in a manner consistent with the inspection of certified facilities by the Secretary of Health and Human Services under section 354(g) of the Public Health Service Act.

(2) The Secretary may not provide for an inspection under paragraph (1) to be performed by a State agency.

(d) The Secretary shall ensure that mammograms performed for the Department under contract with any non-Department facility or provider conform to the quality standards prescribed by the Secretary of Health and Human Services under section 354 of the Public Health Service Act.

(e) For the purposes of this section, the term "mammogram" has the meaning given such term in paragraph (5) of section 354(a) of the Public Health Service Act.

(Added Pub. L. 104-262, title III, § 321(a)(1), Oct. 9, 1996, 110 Stat. 3195.)

REFERENCES IN TEXT

Section 354 of the Public Health Service Act, referred to in text, is section 354 of act July 1, 1944, ch. 373, which is classified to section 263b of Title 42, The Public Health and Welfare.

DEADLINE FOR PRESCRIBING STANDARDS

Section 321(b) of Pub. L. 104-262 provided that: "The Secretary of Veterans Affairs shall prescribe standards under subsection (b) of section 7319 of title 38, United States Code, as added by subsection (a), not later than the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 9, 1996]."

IMPLEMENTATION REPORT

Section 321(c) of Pub. L. 104-262 provided that: "The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's implementation of section 7319 of title 38, United States Code, as added by subsection (a). The report shall be submitted not later than 120 days after the date of the enactment of this Act [Oct. 9, 1996]."

§ 7320. Centers for mental illness research, education, and clinical activities

(a) The purpose of this section is to provide for the improvement of the provision of health-care services and related counseling services to eligible veterans suffering from mental illness (especially mental illness related to service-related conditions) through—

(1) the conduct of research (including research on improving mental health service facilities of the Department and on improving the delivery of mental health services by the Department);

(2) the education and training of health care personnel of the Department; and

(3) the development of improved models and systems for the furnishing of mental health services by the Department.

(b)(1) The Secretary shall establish and operate centers for mental illness research, education, and clinical activities. Such centers shall be established and operated by collaborating Department facilities as provided in subsection (c)(1). Each such center shall function as a center for—

(A) research on mental health services;

(B) the use by the Department of specific models for furnishing services to treat serious mental illness;

(C) education and training of health-care professionals of the Department; and

(D) the development and implementation of innovative clinical activities and systems of care with respect to the delivery of such services by the Department.

(2) The Secretary shall, upon the recommendation of the Under Secretary for Health, designate the centers under this section. In making such designations, the Secretary shall ensure that the centers designated are located in various geographic regions of the United States. The Secretary may designate a center under this section only if—

(A) the proposal submitted for the designation of the center meets the requirements of subsection (c);

(B) the Secretary makes the finding described in subsection (d); and

(C) the peer review panel established under subsection (e) makes the determination specified in subsection (e)(3) with respect to that proposal.

(3) Not more than five centers may be designated under this section.

(4) The authority of the Secretary to establish and operate centers under this section is subject to the appropriation of funds for that purpose.

(c) A proposal submitted for the designation of a center under this section shall—

(1) provide for close collaboration in the establishment and operation of the center, and for the provision of care and the conduct of research and education at the center, by a Department facility or facilities in the same geographic area which have a mission centered on care of the mentally ill and a Department facility in that area which has a mission of providing tertiary medical care;

(2) provide that no less than 50 percent of the funds appropriated for the center for support of clinical care, research, and education will be provided to the collaborating facility or facilities that have a mission centered on care of the mentally ill; and

(3) provide for a governance arrangement between the collaborating Department facilities which ensures that the center will be established and operated in a manner aimed at im-

proving the quality of mental health care at the collaborating facility or facilities which have a mission centered on care of the mentally ill.

(d) The finding referred to in subsection (b)(2)(B) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendation of the Under Secretary for Health, that the facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(1) An arrangement with an accredited medical school that provides education and training in psychiatry and with which one or more of the participating Department facilities is affiliated under which medical residents receive education and training in psychiatry through regular rotation through the participating Department facilities so as to provide such residents with training in the diagnosis and treatment of mental illness.

(2) An arrangement with an accredited graduate program of psychology under which students receive education and training in clinical, counseling, or professional psychology through regular rotation through the participating Department facilities so as to provide such students with training in the diagnosis and treatment of mental illness.

(3) An arrangement under which nursing, social work, counseling, or allied health personnel receive training and education in mental health care through regular rotation through the participating Department facilities.

(4) The ability to attract scientists who have demonstrated achievement in research—

(A) into the evaluation of innovative approaches to the design of mental health services; or

(B) into the causes, prevention, and treatment of mental illness.

(5) The capability to evaluate effectively the activities of the center, including activities relating to the evaluation of specific efforts to improve the quality and effectiveness of mental health services provided by the Department at or through individual facilities.

(e)(1) In order to provide advice to assist the Secretary and the Under Secretary for Health to carry out their responsibilities under this section, the official within the central office of the Veterans Health Administration responsible for mental health and behavioral sciences matters shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of centers under this section.

(2) The panel shall consist of experts in the fields of mental health research, education and training, and clinical care. Members of the panel shall serve as consultants to the Department.

(3) The panel shall review each proposal submitted to the panel by the official referred to in paragraph (1) and shall submit to that official its views on the relative scientific and clinical merit of each such proposal. The panel shall specifically determine with respect to each such proposal whether that proposal is among those proposals which have met the highest competitive standards of scientific and clinical merit.

(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(f) Clinical and scientific investigation activities at each center established under this section—

(1) may compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account; and

(2) shall receive priority in the award of funding from such account insofar as funds are awarded to projects and activities relating to mental illness.

(g) The Under Secretary for Health shall ensure that at least three centers designated under this section emphasize research into means of improving the quality of care for veterans suffering from mental illness through the development of community-based alternatives to institutional treatment for such illness.

(h) The Under Secretary for Health shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Veterans Health Administration. Such dissemination shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

(i) The official within the central office of the Veterans Health Administration responsible for mental health and behavioral sciences matters shall be responsible for supervising the operation of the centers established pursuant to this section and shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(j)(1) There are authorized to be appropriated to the Department of Veterans Affairs for the basic support of the research and education and training activities of centers established pursuant to this section amounts as follows:

(A) \$3,125,000 for fiscal year 1998.

(B) \$6,250,000 for each of fiscal years 1999 through 2001.

(2) In addition to funds appropriated for a fiscal year pursuant to the authorization of appropriations in paragraph (1), the Under Secretary for Health shall allocate to such centers from other funds appropriated for that fiscal year generally for the Department of Veterans Affairs medical services account and the Department of Veterans Affairs medical and prosthetics research account such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.

(Added Pub. L. 104-262, title III, §334(a)(1), Oct. 9, 1996, 110 Stat. 3200; amended Pub. L. 110-387, title IX, §901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (j)(2). Pub. L. 110-387 substituted “medical services account” for “medical care account”.

ANNUAL REPORTS ON AND DESIGNATION OF CENTERS

Section 334(b), (c) of Pub. L. 104-262 provided that:

“(b) ANNUAL REPORTS.—Not later than February 1 of each of 1999, 2000, 2001, and 2002, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and activities during the previous fiscal year of the centers for mental illness research, education, and clinical activities established pursuant to section 7320 of title 38, United States Code (as added by subsection (a)). Each such report shall include the following:

“(1) A description of the activities carried out at each center and the funding provided for such activities.

“(2) A description of the advances made at each of the participating facilities of the center in research, education and training, and clinical activities relating to mental illness in veterans.

“(3) A description of the actions taken by the Under Secretary for Health pursuant to subsection (h) of that section (as so added) to disseminate information derived from such activities throughout the Veterans Health Administration.

“(4) The Secretary's evaluations of the effectiveness of the centers in fulfilling the purposes of the centers.

“(c) IMPLEMENTATION.—The Secretary of Veterans Affairs shall designate at least one center under section 7320 of title 38, United States Code, not later than January 1, 1998.”

§ 7321. Committee on Care of Severely Chronically Mentally Ill Veterans

(a) The Secretary, acting through the Under Secretary for Health, shall establish in the Veterans Health Administration a Committee on Care of Severely Chronically Mentally Ill Veterans. The Under Secretary shall appoint employees of the Department with expertise in the care of the chronically mentally ill to serve on the committee.

(b) The committee shall assess, and carry out a continuing assessment of, the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of mentally ill veterans whose mental illness is severe and chronic and who are eligible for health care furnished by the Department, including the needs of such veterans who are women. In carrying out that responsibility, the committee shall—

(1) evaluate the care provided to such veterans through the Veterans Health Administration;

(2) identify systemwide problems in caring for such veterans in facilities of the Veterans Health Administration;

(3) identify specific facilities within the Veterans Health Administration at which program enrichment is needed to improve treatment and rehabilitation of such veterans; and

(4) identify model programs which the committee considers to have been successful in the treatment and rehabilitation of such veterans and which should be implemented more widely in or through facilities of the Veterans Health Administration.

(c) The committee shall—

(1) advise the Under Secretary regarding the development of policies for the care and rehabilitation of severely chronically mentally ill veterans; and

(2) make recommendations to the Under Secretary—

(A) for improving programs of care of such veterans at specific facilities and throughout the Veterans Health Administration;

(B) for establishing special programs of education and training relevant to the care of such veterans for employees of the Veterans Health Administration;

(C) regarding research needs and priorities relevant to the care of such veterans; and

(D) regarding the appropriate allocation of resources for all such activities.

(d)(1) Not later than April 1, 1997, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this section. The report shall include the following:

(A) A list of the members of the committee.

(B) The assessment of the Under Secretary for Health, after review of the initial findings of the committee, regarding the capability of the Veterans Health Administration, on a systemwide and facility-by-facility basis, to meet effectively the treatment and rehabilitation needs of severely chronically mentally ill veterans who are eligible for Department care.

(C) The plans of the committee for further assessments.

(D) The findings and recommendations made by the committee to the Under Secretary for Health and the views of the Under Secretary on such findings and recommendations.

(E) A description of the steps taken, plans made (and a timetable for their execution), and resources to be applied toward improving the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of severely chronically mentally ill veterans who are eligible for Department care.

(2) Not later than June 1 of each year through 2012, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing information updating the reports submitted under this subsection before the submission of such report.

(Added Pub. L. 104-262, title III, § 335(a), Oct. 9, 1996, 110 Stat. 3204; amended Pub. L. 106-419, title IV, § 402(f), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108-170, title IV, § 405(c), Dec. 6, 2003, 117 Stat. 2063; Pub. L. 110-387, title VIII, § 807, Oct. 10, 2008, 122 Stat. 4141.)

AMENDMENTS

2008—Subsec. (d)(2). Pub. L. 110-387 substituted “through 2012” for “through 2008”.

2003—Subsec. (d)(2). Pub. L. 108-170 substituted “June 1 of each year through 2008” for “February 1, 1998, and February 1 of each of the six following years”.

2000—Subsec. (d)(2). Pub. L. 106-419, substituted “six following years” for “three following years”.

§ 7321A. Committee on Care of Veterans with Traumatic Brain Injury

(a) ESTABLISHMENT.—The Secretary shall establish in the Veterans Health Administration a committee to be known as the “Committee on Care of Veterans with Traumatic Brain Injury”. The Under Secretary for Health shall appoint employees of the Department with expertise in the care of veterans with traumatic brain injury to serve on the committee.

(b) RESPONSIBILITIES OF COMMITTEE.—The committee shall assess, and carry out a continuing assessment of, the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury. In carrying out that responsibility, the committee shall—

(1) evaluate the care provided to such veterans through the Veterans Health Administration;

(2) identify systemwide problems in caring for such veterans in facilities of the Veterans Health Administration;

(3) identify specific facilities within the Veterans Health Administration at which program enrichment is needed to improve treatment and rehabilitation of such veterans; and

(4) identify model programs which the committee considers to have been successful in the treatment and rehabilitation of such veterans and which should be implemented more widely in or through facilities of the Veterans Health Administration.

(c) ADVICE AND RECOMMENDATIONS.—The committee shall—

(1) advise the Under Secretary regarding the development of policies for the care and rehabilitation of veterans with traumatic brain injury; and

(2) make recommendations to the Under Secretary—

(A) for improving programs of care of such veterans at specific facilities and throughout the Veterans Health Administration;

(B) for establishing special programs of education and training relevant to the care of such veterans for employees of the Veterans Health Administration;

(C) regarding research needs and priorities relevant to the care of such veterans; and

(D) regarding the appropriate allocation of resources for all such activities.

(d) ANNUAL REPORT.—Not later than June 1, 2010, and each year thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the implementation of this section. Each such report shall include the following for the calendar year preceding the year in which the report is submitted:

(1) A list of the members of the committee.

(2) The assessment of the Under Secretary for Health, after review of the findings of the committee, regarding the capability of the Veterans Health Administration, on a systemwide and facility-by-facility basis, to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury.

(3) The plans of the committee for further assessments.

(4) The findings and recommendations made by the committee to the Under Secretary for Health and the views of the Under Secretary on such findings and recommendations.

(5) A description of the steps taken, plans made (and a timetable for the execution of such plans), and resources to be applied toward improving the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of veterans with traumatic brain injury.

(Added Pub. L. 111-163, title V, §515(a), May 5, 2010, 124 Stat. 1165.)

§ 7322. Breast cancer mammography policy

(a) The Under Secretary for Health shall develop a national policy for the Veterans Health Administration on mammography screening for veterans.

(b) The policy developed under subsection (a) shall—

(1) specify standards of mammography screening;

(2) provide recommendations with respect to screening, and the frequency of screening, for—

(A) women veterans who are over the age of 39; and

(B) veterans, without regard to age, who have clinical symptoms, risk factors, or family history of breast cancer; and

(3) provide for clinician discretion.

(Added Pub. L. 105-114, title II, §208(a)(1), Nov. 21, 1997, 111 Stat. 2289.)

EFFECTIVE DATE

Section 208(b) of Pub. L. 105-114 provided that: “The Secretary of Veterans Affairs shall develop the national policy on mammography screening required by section 7322 of title 38, United States Code, as added by subsection (a), and shall furnish such policy in a report to the Committees on Veterans' Affairs of the Senate and House of Representatives, not later than 60 days after the date of the enactment of this Act [Nov. 21, 1997]. Such policy shall not take effect before the expiration of 30 days after the date of its submission to those committees.”

SENSE OF CONGRESS

Section 208(c) of Pub. L. 105-114 provided that: “It is the sense of Congress that the policy developed under section 7322 of title 38, United States Code, as added by subsection (a), shall be in accordance with the guidelines endorsed by the Secretary of Health and Human Services and the Director of the National Institutes of Health.”

§ 7323. Required consultations with nurses

The Under Secretary for Health shall ensure that—

(1) the director of a geographic service area, in formulating policy relating to the provision of patient care, shall consult regularly with a senior nurse executive or senior nurse executives; and

(2) the director of a medical center shall include a registered nurse as a member of any committee used at that medical center to provide recommendations or decisions on medical center operations or policy affecting clinical services, clinical outcomes, budget, or resources.

(Added Pub. L. 106-419, title II, §201(b)(1), Nov. 1, 2000, 114 Stat. 1840.)

§ 7324. Annual report on use of authorities to enhance retention of experienced nurses

(a) ANNUAL REPORT.—Not later than January 31 each year, the Secretary, acting through the Under Secretary for Health, shall submit to Congress a report on the use during the preceding year of authorities for purposes of retaining experienced nurses in the Veterans Health Administration, as follows:

(1) The authorities under chapter 76 of this title.

(2) The authority under VA Directive 5102.1, relating to the Department of Veterans Affairs nurse qualification standard, dated November 10, 1999, or any successor directive.

(3) Any other authorities available to the Secretary for those purposes.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify for the period covered by such report, for each Department medical facility and for each geographic service area of the Department, the following:

(1) The number of waivers requested under the authority referred to in subsection (a)(2), and the number of waivers granted under that authority, to promote to the Nurse II grade or Nurse III grade under the Nurse Schedule under section 7404(b)(1) of this title any nurse who has not completed a baccalaureate degree in nursing in a recognized school of nursing, set forth by age, race, and years of experience of the individuals subject to such waiver requests and waivers, as the case may be.

(2) The programs carried out to facilitate the use of nursing education programs by experienced nurses, including programs for flexible scheduling, scholarships, salary replacement pay, and on-site classes.

(Added Pub. L. 107-135, title I, §125(a)(1), Jan. 23, 2002, 115 Stat. 2452.)

INITIAL REPORT

Pub. L. 107-135, title I, §125(b), Jan. 23, 2002, 115 Stat. 2453, required that the initial report under this section be submitted to the National Commission on VA Nursing as well as to Congress.

§ 7325. Medical emergency preparedness centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary shall establish four medical emergency preparedness centers in accordance with this section. Each such center shall be established at a Department medical center and shall be staffed by Department employees.

(2) The Under Secretary for Health shall be responsible for supervising the operation of the centers established under this section. The Under Secretary shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(3) The Under Secretary shall carry out the Under Secretary's functions under paragraph (2) in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(b) MISSION.—The mission of the centers shall be as follows:

(1) To carry out research on, and to develop methods of detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(2) To provide education, training, and advice to health care professionals, including health care professionals outside the Veterans Health Administration, through the National Disaster Medical System established pursuant to section 2812 of the Public Health Service Act (42 U.S.C. 300hh-11) or through inter-agency agreements entered into by the Secretary for that purpose.

(3) In the event of a disaster or emergency referred to in section 1785(b) of this title, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the disaster or emergency.

(c) **SELECTION OF CENTERS.**—(1) The Secretary shall select the sites for the centers on the basis of a competitive selection process. The Secretary may not designate a site as a location for a center under this section unless the Secretary makes a finding under paragraph (2) with respect to the proposal for the designation of such site. To the maximum extent practicable, the Secretary shall ensure the geographic dispersal of the sites throughout the United States. Any such center may be a consortium of efforts of more than one medical center.

(2) A finding by the Secretary referred to in paragraph (1) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendations of the Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions, that the facility or facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with a qualifying medical school and a qualifying school of public health (or a consortium of such schools) under which physicians and other persons in the health field receive education and training through the participating Department medical facilities so as to provide those persons with training in the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses induced by exposures to chemical and biological substances, radiation, and incendiary or other explosive weapons or devices.

(B) An arrangement with a graduate school specializing in epidemiology under which students receive education and training in epidemiology through the participating Department facilities so as to provide such students with training in the epidemiology of contagious and infectious diseases and chemical and radiation poisoning in an exposed population.

(C) An arrangement under which nursing, social work, counseling, or allied health personnel and students receive training and edu-

cation in recognizing and caring for conditions associated with exposures to toxins through the participating Department facilities.

(D) The ability to attract scientists who have made significant contributions to the development of innovative approaches to the detection, diagnosis, prevention, or treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(3) For purposes of paragraph (2)(A)—

(A) a qualifying medical school is an accredited medical school that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated; and

(B) a qualifying school of public health is an accredited school of public health that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated.

(d) **RESEARCH ACTIVITIES.**—Each center shall conduct research on improved medical preparedness to protect the Nation from threats in the area of that center's expertise. Each center may seek research funds from public and private sources for such purpose.

(e) **DISSEMINATION OF RESEARCH PRODUCTS.**—(1) The Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section is made available, as appropriate, to health-care providers in the United States. Dissemination of such information shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

(2) The Secretary shall ensure that the work of the centers is conducted in close coordination with other Federal departments and agencies and that research products or other information of the centers shall be coordinated and shared with other Federal departments and agencies.

(f) **COORDINATION OF ACTIVITIES.**—The Secretary shall take appropriate actions to ensure that the work of each center is carried out—

(1) in close coordination with the Department of Defense, the Department of Health and Human Services, and other departments, agencies, and elements of the Government charged with coordination of plans for United States homeland security; and

(2) after taking into consideration applicable recommendations of the working group on the prevention, preparedness, and response to bioterrorism and other public health emergencies established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d-6(a)) or any other joint interagency advisory group or

committee designated by the President or the President's designee to coordinate Federal research on weapons of mass destruction.

(g) ASSISTANCE TO OTHER AGENCIES.—The Secretary may provide assistance requested by appropriate Federal, State, and local civil and criminal authorities in investigations, inquiries, and data analyses as necessary to protect the public safety and prevent or obviate biological, chemical, or radiological threats.

(h) DETAIL OF EMPLOYEES FROM OTHER AGENCIES.—Upon approval by the Secretary, the Director of a center may request the temporary assignment or detail to the center, on a non-reimbursable basis, of employees from other departments and agencies of the United States who have expertise that would further the mission of the center. Any such employee may be so assigned or detailed on a nonreimbursable basis pursuant to such a request.

(i) FUNDING.—(1) Amounts appropriated for the activities of the centers under this section shall be appropriated separately from amounts appropriated for the Department for medical care.

(2) In addition to funds appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to such centers from other funds appropriated for that fiscal year generally for the Department medical services account and the Department medical and prosthetics research account such amounts as the Under Secretary determines appropriate to carry out the purposes of this section. Any determination by the Under Secretary under the preceding sentence shall be made in consultation with the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions.

(3) There are authorized to be appropriated for the centers under this section \$20,000,000 for each of fiscal years 2003 through 2007.

(Added Pub. L. 107-287, §2(a)(1), Nov. 7, 2002, 116 Stat. 2024; amended Pub. L. 110-387, title IX, §901(a)(8), Oct. 10, 2008, 122 Stat. 4142; Pub. L. 111-275, title X, §1001(n)(2), Oct. 13, 2010, 124 Stat. 2897.)

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-275 substituted “section 2812 of the Public Health Service Act (42 U.S.C. 300hh-11)” for “section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b))”.

2008—Subsec. (i)(2). Pub. L. 110-387 substituted “medical services account” for “medical care account”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System, including the functions of the Secretary of Homeland Security and the Under Secretary for Emergency Preparedness and Response relating thereto, to the Secretary of Health and Human Services, see title III of Pub. L. 109-295, set out in part as a note under section 300hh-11 of Title 42, The Public Health and Welfare, and section 301(b) of Pub. L. 109-417, set out as a note under section 300hh-11 of Title 42.

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health

Emergency Preparedness [now Assistant Secretary for Preparedness and Response] relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PEER REVIEW FOR DESIGNATION OF CENTERS

Pub. L. 107-287, §2(b), Nov. 7, 2002, 116 Stat. 2027, provided that:

“(1) In order to assist the Secretary of Veterans Affairs and the Under Secretary of Veterans Affairs for Health in selecting sites for centers under section 7325 of title 38, United States Code, as added by subsection (a), the Under Secretary shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of such centers. The peer review panel shall be established in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

“(2) The peer review panel shall include experts in the fields of toxicological research, infectious diseases, radiology, clinical care of patients exposed to such hazards, and other persons as determined appropriate by the Secretary. Members of the panel shall serve as consultants to the Department of Veterans Affairs.

“(3) The panel shall review each proposal submitted to the panel by the officials referred to in paragraph (1) and shall submit to the Under Secretary for Health its views on the relative scientific and clinical merit of each such proposal. The panel shall specifically determine with respect to each such proposal whether that proposal is among those proposals which have met the highest competitive standards of scientific and clinical merit.

“(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”

§ 7326. Education and training programs on medical response to consequences of terrorist activities

(a) EDUCATION PROGRAM.—The Secretary shall carry out a program to develop and disseminate a series of model education and training programs on the medical responses to the consequences of terrorist activities.

(b) IMPLEMENTING OFFICIAL.—The program shall be carried out through the Under Secretary for Health, in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(c) CONTENT OF PROGRAMS.—The education and training programs developed under the program shall be modeled after programs established at the F. Edward Hébert School of Medicine of the Uniformed Services University of the Health Sciences and shall include, at a minimum, training for health care professionals in the following:

(1) Recognition of chemical, biological, radiological, incendiary, or other explosive agents, weapons, or devices that may be used in terrorist activities.

(2) Identification of the potential symptoms of exposure to those agents.

(3) Understanding of the potential long-term health consequences, including psychological effects, resulting from exposure to those agents, weapons, or devices.

(4) Emergency treatment for exposure to those agents, weapons, or devices.

(5) An appropriate course of followup treatment, supportive care, and referral.

(6) Actions that can be taken while providing care for exposure to those agents, weapons, or devices to protect against contamination, injury, or other hazards from such exposure.

(7) Information on how to seek consultative support and to report suspected or actual use of those agents.

(d) **POTENTIAL TRAINEES.**—In designing the education and training programs under this section, the Secretary shall ensure that different programs are designed for health-care professionals in Department medical centers. The programs shall be designed to be disseminated to health professions students, graduate health and medical education trainees, and health practitioners in a variety of fields.

(e) **CONSULTATION.**—In establishing education and training programs under this section, the Secretary shall consult with appropriate representatives of accrediting, certifying, and coordinating organizations in the field of health professions education.

(Added Pub. L. 107-287, §3(a)(1), Nov. 7, 2002, 116 Stat. 2027.)

IMPLEMENTATION

Pub. L. 107-287, §3(b), Nov. 7, 2002, 116 Stat. 2028, provided that: “The Secretary of Veterans Affairs shall implement section 7326 of title 38, United States Code, as added by subsection (a), not later than the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 7, 2002].”

§ 7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries

(a) **PURPOSE.**—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from complex multi-trauma associated with combat injuries through—

(1) the development of improved models and systems for the furnishing by the Department of health care, rehabilitation, and education services to veterans;

(2) the conduct of research to support the provision of such services in accordance with the most current evidence on multi-trauma injuries; and

(3) the education and training of health care personnel of the Department with respect to the provision of such services.

(b) **DESIGNATION OF CENTERS.**—(1) The Secretary shall designate an appropriate number of cooperative centers for clinical care, consultation, research, and education activities on combat injuries.

(2) Each center designated under paragraph (1) shall function as a center for—

(A) research on the long-term effects of injuries sustained as a result of combat in order to support the provision of services for such injuries in accordance with the most current evidence on complex multi-trauma;

(B) the development of rehabilitation methodologies for treating individuals with complex multi-trauma; and

(C) the continuous and consistent coordination of care from the point of referral throughout the rehabilitation process and ongoing follow-up after return to home and community.

(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for activities referred to in that paragraph. As the lead center for such activities, such center shall—

(A) develop and provide periodic review of research priorities, and implement protocols, to ensure that projects contribute to the activities of the centers designated under paragraph (1);

(B) oversee the coordination of the professional and technical activities of such centers to ensure the quality and validity of the methodologies and statistical services for research project leaders;

(C) develop and ensure the deployment of an efficient and cost-effective data management system for such centers;

(D) develop and distribute educational materials and products to enhance the evaluation and care of individuals with combat injuries by medical care providers of the Department who are not specialized in the assessment and care of complex multi-trauma;

(E) develop educational materials for individuals suffering from combat injuries and for their families; and

(F) serve as a resource for the clinical and research infrastructure of such centers by disseminating clinical outcomes and research findings to improve clinical practice.

(4) The Secretary shall designate centers under paragraph (1) upon the recommendation of the Under Secretary for Health.

(5) The Secretary may designate a center under paragraph (1) only if the center meets the requirements of subsection (c).

(c) **REQUIREMENTS FOR CENTERS.**—To be designated as a center under this section, a facility shall—

(1) be a regional lead center for the care of traumatic brain injury;

(2) be located at a tertiary care medical center and have on-site availability of primary and subspecialty medical services relating to complex multi-trauma;

(3) have, or have the capacity to develop, the capability of managing impairments associated with combat injuries;

(4) be affiliated with a school of medicine;

(5) have, or have experience with, participation in clinical research trials;

(6) provide amputation care and rehabilitation;

(7) have pain management programs;

(8) provide comprehensive brain injury rehabilitation; and

(9) provide comprehensive general rehabilitation.

(d) **ADDITIONAL RESOURCES.**—The Secretary shall provide each center designated under this section such resources as the Secretary determines to be required by such center to achieve adequate capability of managing individuals with complex multi-trauma, including—

(1) the upgrading of blind rehabilitation services by employing or securing the services of blind rehabilitation specialists;

(2) employing or securing the services of occupational therapists with blind rehabilitation training;

(3) employing or securing the services of additional mental health services providers; and

(4) employing or securing additional rehabilitation nursing staff to meet care needs.

(e) COOPERATION WITH DEPARTMENT OF DEFENSE.—(1) The Secretary of Veterans Affairs may assist the Secretary of Defense in the care of members of the Armed Forces with complex multi-trauma at military treatment facilities by—

(A) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, certified rehabilitation registered nurses of the Department of Veterans Affairs to such facilities to assess and coordinate the care of such members; and

(B) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, blind rehabilitation specialists of the Department of Veterans Affairs to such facilities to consult with the medical staff of such facilities on the special needs of such members who have visual impairment as a consequence of combat injury.

(2) Assistance shall be provided under this subsection through agreements for the sharing of health-care resources under section 8111 of this title.

(f) AWARD OF FUNDING.—Centers designated under this section may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research.

(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers designated under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means.

(h) NATIONAL OVERSIGHT.—The Under Secretary for Health shall designate an appropriate officer to oversee the operation of the centers designated under this section and provide for periodic evaluation of the centers.

(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers designated under this section amounts as follows:

(A) \$7,000,000 for fiscal year 2005.

(B) \$8,000,000 for each of fiscal years 2006 through 2008.

(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health may allocate to each center designated under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetic research, such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.

(Added Pub. L. 108-422, title III, §302(a)(1), Nov. 30, 2004, 118 Stat. 2383.)

CENTER OF EXCELLENCE IN THE MITIGATION, TREATMENT, AND REHABILITATION OF TRAUMATIC EXTREMITY INJURIES AND AMPUTATIONS

Pub. L. 110-417, [div. A], title VII, §723, Oct. 14, 2008, 122 Stat. 4508, provided that:

“(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly establish a center of excellence in the mitigation, treatment, and rehabilitation of traumatic extremity injuries and amputations.

“(b) PARTNERSHIPS.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly ensure that the center collaborates with the Department of Defense, the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

“(c) RESPONSIBILITIES.—The center shall have the responsibilities as follows:

“(1) To implement a comprehensive plan and strategy for the Department of Defense and the Department of Veterans Affairs for the mitigation, treatment, and rehabilitation of traumatic extremity injuries and amputations.

“(2) To conduct research to develop scientific information aimed at saving injured extremities, avoiding amputations, and preserving and restoring the function of injured extremities. Such research shall address military medical needs and include the full range of scientific inquiry encompassing basic, translational, and clinical research.

“(3) To carry out such other activities to improve and enhance the efforts of the Department of Defense and the Department of Veterans Affairs for the mitigation, treatment, and rehabilitation of traumatic extremity injuries and amputations as the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate.

“(d) REPORTS.—

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and annually thereafter, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report on the activities of the center.

“(2) ELEMENTS.—Each report under this subsection shall include the following:

“(A) In the case of the first report under this subsection, a description of the implementation of the requirements of this Act.

“(B) A description and assessment of the activities of the center during the one-year period ending on the date of such report, including an assessment of the role of such activities in improving and enhancing the efforts of the Department of Defense and the Department of Veterans Affairs for the mitigation, treatment, and rehabilitation of traumatic extremity injuries and amputations.”

DESIGNATION OF CENTERS

Pub. L. 108-422, title III, §302(b), Nov. 30, 2004, 118 Stat. 2385, provided that: “The Secretary of Veterans Affairs shall designate the centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Nov. 30, 2004].”

§ 7328. Medical preparedness centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary shall establish four medical emergency preparedness centers in accordance with this section. Each such center shall be established at a Department medical center and shall be staffed by Department employees.

(2) The Under Secretary for Health shall be responsible for supervising the operation of the centers established under this section. The Under Secretary shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(3) The Under Secretary shall carry out the Under Secretary's functions under paragraph (2) in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(b) MISSION.—The mission of the centers shall be as follows:

(1) To carry out research on, and to develop methods of detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(2) To provide education, training, and advice to health care professionals, including health care professionals outside the Veterans Health Administration, through the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b))¹ or through inter-agency agreements entered into by the Secretary for that purpose.

(3) In the event of a disaster or emergency referred to in section 1785(b) of this title, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the disaster or emergency.

(c) SELECTION OF CENTERS.—(1) The Secretary shall select the sites for the centers on the basis of a competitive selection process. The Secretary may not designate a site as a location for a center under this section unless the Secretary makes a finding under paragraph (2) with respect to the proposal for the designation of such site. To the maximum extent practicable, the Secretary shall ensure the geographic dispersal of the sites throughout the United States. Any such center may be a consortium of efforts of more than one medical center.

(2) A finding by the Secretary referred to in paragraph (1) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendations of the Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions, that the facility or facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with a qualifying medical school and a qualifying school of public health (or a consortium of such schools) under which physicians and other persons in the health field receive education and training through the participating Department medical facilities so as to provide those persons with

training in the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses induced by exposures to chemical and biological substances, radiation, and incendiary or other explosive weapons or devices.

(B) An arrangement with a graduate school specializing in epidemiology under which students receive education and training in epidemiology through the participating Department facilities so as to provide such students with training in the epidemiology of contagious and infectious diseases and chemical and radiation poisoning in an exposed population.

(C) An arrangement under which nursing, social work, counseling, or allied health personnel and students receive training and education in recognizing and caring for conditions associated with exposures to toxins through the participating Department facilities.

(D) The ability to attract scientists who have made significant contributions to the development of innovative approaches to the detection, diagnosis, prevention, or treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(3) For purposes of paragraph (2)(A)—

(A) a qualifying medical school is an accredited medical school that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated; and

(B) a qualifying school of public health is an accredited school of public health that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated.

(d) RESEARCH ACTIVITIES.—Each center shall conduct research on improved medical preparedness to protect the Nation from threats in the area of that center's expertise. Each center may seek research funds from public and private sources for such purpose.

(e) DISSEMINATION OF RESEARCH PRODUCTS.—(1) The Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section is made available, as appropriate, to health-care providers in the United States. Dissemination of such information shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

(2) The Secretary shall ensure that the work of the centers is conducted in close coordination with other Federal departments and agencies and that research products or other information of the centers shall be coordinated and shared with other Federal departments and agencies.

¹ See References in Text note below.

(f) COORDINATION OF ACTIVITIES.—The Secretary shall take appropriate actions to ensure that the work of each center is carried out—

(1) in close coordination with the Department of Defense, the Department of Health and Human Services, and other departments, agencies, and elements of the Government charged with coordination of plans for United States homeland security; and

(2) after taking into consideration applicable recommendations of the working group on the prevention, preparedness, and response to bioterrorism and other public health emergencies established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d-6(a)) or any other joint interagency advisory group or committee designated by the President or the President's designee to coordinate Federal research on weapons of mass destruction.

(g) ASSISTANCE TO OTHER AGENCIES.—The Secretary may provide assistance requested by appropriate Federal, State, and local civil and criminal authorities in investigations, inquiries, and data analyses as necessary to protect the public safety and prevent or obviate biological, chemical, or radiological threats.

(h) DETAIL OF EMPLOYEES FROM OTHER AGENCIES.—Upon approval by the Secretary, the Director of a center may request the temporary assignment or detail to the center, on a non-reimbursable basis, of employees from other departments and agencies of the United States who have expertise that would further the mission of the center. Any such employee may be so assigned or detailed on a nonreimbursable basis pursuant to such a request.

(i) FUNDING.—(1) There are authorized to be appropriated for the centers under this section \$10,000,000 for each of fiscal years 2005 through 2007.

(2) In addition to any amounts appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to the centers from other funds appropriated for that fiscal year generally for the Department medical services account and the Department medical and prosthetic research account such amounts as the Under Secretary determines necessary in order to carry out the purposes of this section.

(Added Pub. L. 108-422, title III, § 303(c)(1), Nov. 30, 2004, 118 Stat. 2386; amended Pub. L. 110-387, title IX, § 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

REFERENCES IN TEXT

Section 2811(b) of the Public Health Service Act, referred to in subsec. (b)(2), was redesignated section 2812(a) of the Public Health Service Act by Pub. L. 109-417, title I, § 102(a)(2), title III, § 301(a)(3), Dec. 19, 2006, 120 Stat. 2832, 2853, and is classified to section 300hh-11(a) of Title 42, The Public Health and Welfare.

CODIFICATION

The text of subsecs. (a) to (h) of this section consists of the text of section 7325(a) to (h) of this title, as duplicated in this section by Pub. L. 108-422, § 303(c)(1)(B), which was based on Pub. L. 107-287, § 2(a)(1), Nov. 7, 2002, 116 Stat. 2024.

AMENDMENTS

2008—Subsec. (i)(2). Pub. L. 110-387 substituted “medical services account” for “medical care account”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System, including the functions of the Secretary of Homeland Security and the Under Secretary for Emergency Preparedness and Response relating thereto, to the Secretary of Health and Human Services, see title III of Pub. L. 109-295, set out in part as a note under section 300hh-11 of Title 42, The Public Health and Welfare, and section 301(b) of Pub. L. 109-417, set out as a note under section 300hh-11 of Title 42.

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness [now Assistant Secretary for Preparedness and Response] relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 108-422, title III, § 303(a), (b), Nov. 30, 2004, 118 Stat. 2386, provided that:

“(a) PEER REVIEW PANEL.—In order to assist the Secretary of Veterans Affairs in selecting facilities of the Department of Veterans Affairs to serve as sites for centers under section 7328 of title 38, United States Code, as added by subsection (c), the Secretary shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the selection of such facilities. The panel shall be established not later than 90 days after the date of the enactment of this Act [Nov. 30, 2004] and shall include experts in the fields of toxicological research, infectious diseases, radiology, clinical care of veterans exposed to such hazards, and other persons as determined appropriate by the Secretary. Members of the panel shall serve as consultants to the Department of Veterans Affairs. Amounts available to the Secretary for Medical Care may be used for purposes of carrying out this subsection. The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

“(b) PROPOSALS.—The Secretary shall solicit proposals for designation of facilities as described in subsection (a). The announcement of the solicitation of such proposals shall be issued not later than 60 days after the date of the enactment of this Act, and the deadline for the submission of proposals in response to such solicitation shall be not later than 90 days after the date of such announcement. The peer review panel established under subsection (a) shall complete its review of the proposals and submit its recommendations to the Secretary not later than 60 days after the date of the deadline for the submission of proposals. The Secretary shall then select the four sites for the location of such centers not later than 45 days after the date on which the peer review panel submits its recommendations to the Secretary.”

§ 7329. Parkinson's Disease research, education, and clinical centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary, upon the recommendation of the Under Secretary for Health, shall designate not less than six Department health-care facilities as the locations for centers of Parkinson's Disease research, education, and clinical activities.

(2) Subject to the availability of appropriations for such purpose, the Secretary shall establish and operate centers of Parkinson's Dis-

ease research, education, and clinical activities centers at the locations designated pursuant to paragraph (1).

(b) **CRITERIA FOR DESIGNATION OF FACILITIES.**—(1) In designating Department health-care facilities for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall assure appropriate geographic distribution of such facilities.

(2) Except as provided in paragraph (3), the Secretary shall designate as the location for a center of Parkinson's Disease research, education, and clinical activities pursuant to subsection (a)(1) each Department health-care facility that as of January 1, 2005, was operating a Parkinson's Disease research, education, and clinical center.

(3) The Secretary may not under subsection (a) designate a facility described in paragraph (2) if (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility—

(A) does not meet the requirements of subsection (c); or

(B) has not demonstrated—

(i) effectiveness in carrying out the established purposes of such center; or

(ii) the potential to carry out such purposes effectively in the reasonably foreseeable future.

(c) **REQUIREMENTS FOR DESIGNATION.**—(1) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(2) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with an accredited medical school that provides education and training in neurology and with which the Department health-care facility is affiliated under which residents receive education and training in innovative diagnosis and treatment of chronic neurodegenerative diseases and movement disorders, including Parkinson's Disease.

(B) The ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts.

(C) An advisory committee composed of veterans and appropriate health-care and research representatives of the Department health-care facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of the center during the period of the operation of such center.

(D) The capability to conduct effectively evaluations of the activities of such center.

(E) The capability to coordinate (as part of an integrated national system) education, clinical, and research activities within all facilities with such centers.

(F) The capability to jointly develop a consortium of providers with interest in treating neurodegenerative diseases, including Parkinson's Disease and other movement disorders, at facilities without centers established under subsection (a) in order to ensure better access to state-of-the-art diagnosis, care, and education for neurodegenerative disorders throughout the health-care system of the Department.

(G) The capability to develop a national repository in the health-care system of the Department for the collection of data on health services delivered to veterans seeking care for neurodegenerative diseases, including Parkinson's Disease, and other movement disorders.

(d) **PEER REVIEW PANEL.**—(1) The Under Secretary for Health shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of centers under this section.

(2)(A) The membership of the panel shall consist of experts in neurodegenerative diseases, including Parkinson's Disease and other movement disorders.

(B) Members of the panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be appointed for a period of two years, as designated by the Under Secretary at the time of appointment.

(3) The panel shall review each proposal submitted to the panel by the Under Secretary and shall submit its views on the relative scientific and clinical merit of each such proposal to the Under Secretary.

(4) The panel shall not be subject to the Federal Advisory Committee Act.

(e) **PRIORITY OF FUNDING.**—Before providing funds for the operation of a center designated under subsection (a) at a Department health-care facility other than at a facility designated pursuant to subsection (b)(2), the Secretary shall ensure that each Parkinson's Disease center at a facility designated pursuant to subsection (b)(2) is receiving adequate funding to enable that center to function effectively in the areas of Parkinson's Disease research, education, and clinical activities.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) **AWARD COMPETITIONS.**—Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account. Such activities shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in Parkinson's Disease and other movement disorders.

(Added Pub. L. 109-461, title II, §209(a)(1), Dec. 22, 2006, 120 Stat. 3413.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

A substantially identical section enacted by Pub. L. 109-444, §6(a)(1), Dec. 21, 2006, 120 Stat. 3308, was repealed by Pub. L. 109-461, title X, §1006(b), Dec. 22, 2006, 120 Stat. 3468, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 109-461, title II, §209(b), Dec. 22, 2006, 120 Stat. 3418, provided that: "Sections 7329 and 7330 of title 38, United States Code, as added by subsection (a), shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 22, 2006]."

Pub. L. 109-444, §6(b), Dec. 21, 2006, 120 Stat. 3312, which provided that this section and section 7330 of this title would take effect at the end of the 30-day period beginning on Dec. 21, 2006, was repealed by Pub. L. 109-461, title X, §1006(b), Dec. 22, 2006, 120 Stat. 3468, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

§ 7330. Multiple sclerosis centers of excellence

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary, upon the recommendation of the Under Secretary for Health, shall designate not less than two Department health-care facilities as the locations for multiple sclerosis centers of excellence.

(2) Subject to the availability of appropriations for such purpose, the Secretary shall establish and operate multiple sclerosis centers of excellence at the locations designated pursuant to paragraph (1).

(b) CRITERIA FOR DESIGNATION OF FACILITIES.—(1) In designating Department health-care facilities for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall assure appropriate geographic distribution of such facilities.

(2) Except as provided in paragraph (3), the Secretary shall designate as the location for a center pursuant to subsection (a)(1) each Department health-care facility that as of January 1, 2005, was operating a multiple sclerosis center of excellence.

(3) The Secretary may not under subsection (a) designate a facility described in paragraph (2) if (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility—

(A) does not meet the requirements of subsection (c); or

(B) has not demonstrated—

(i) effectiveness in carrying out the established purposes of such center; or

(ii) the potential to carry out such purposes effectively in the reasonably foreseeable future.

(c) REQUIREMENTS FOR DESIGNATION.—(1) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal

submitted by such facility as a location for a new center under subsection (a) is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(2) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with an accredited medical school that provides education and training in neurology and with which the Department health-care facility is affiliated under which residents receive education and training in innovative diagnosis and treatment of autoimmune diseases affecting the central nervous system, including multiple sclerosis.

(B) The ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts.

(C) An advisory committee composed of veterans and appropriate health-care and research representatives of the Department health-care facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of the center during the period of the operation of such center.

(D) The capability to conduct effectively evaluations of the activities of such center.

(E) The capability to coordinate (as part of an integrated national system) education, clinical, and research activities within all facilities with such centers.

(F) The capability to jointly develop a consortium of providers with interest in treating multiple sclerosis at facilities without such centers in order to ensure better access to state-of-the-art diagnosis, care, and education for autoimmune disease affecting the central nervous system throughout the health-care system of the Department.

(G) The capability to develop a national repository in the health-care system of the Department for the collection of data on health services delivered to veterans seeking care for autoimmune disease affecting the central nervous system.

(d) PEER REVIEW PANEL.—(1) The Under Secretary for Health shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of centers under this section.

(2)(A) The membership of the panel shall consist of experts in autoimmune disease affecting the central nervous system.

(B) Members of the panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be appointed for a period of two years, as designated by the Under Secretary at the time of appointment.

(3) The panel shall review each proposal submitted to the panel by the Under Secretary and shall submit its views on the relative scientific and clinical merit of each such proposal to the Under Secretary.

(4) The panel shall not be subject to the Federal Advisory Committee Act.

(e) PRIORITY OF FUNDING.—Before providing funds for the operation of a center designated under subsection (a) at a Department health-care facility other than at a facility designated pursuant to subsection (b)(2), the Secretary shall ensure that each multiple sclerosis center at a facility designated pursuant to subsection (b)(2) is receiving adequate funding to enable that center to function effectively in the areas of multiple sclerosis research, education, and clinical activities.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) AWARD COMPETITIONS.—Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account. Such activities shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in multiple sclerosis and other neurodegenerative disorders.

(Added Pub. L. 109-461, title II, §209(a)(1), Dec. 22, 2006, 120 Stat. 3416.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

A substantially identical section enacted by Pub. L. 109-444, §6(a)(1), Dec. 21, 2006, 120 Stat. 3310, was repealed by Pub. L. 109-461, title X, §1006(b), Dec. 22, 2006, 120 Stat. 3468, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

EFFECTIVE DATE

Section effective at the end of the 30-day period beginning Dec. 22, 2006, see section 209(b) of Pub. L. 109-461, set out as a note under section 7329 of this title.

§ 7330A. Epilepsy centers of excellence

(a) ESTABLISHMENT OF CENTERS.—(1) Not later than 120 days after the date of the enactment of the Veterans' Mental Health and Other Care Improvements Act of 2008, the Secretary shall designate at least four but not more than six Department health care facilities as locations for epilepsy centers of excellence for the Department.

(2) Of the facilities designated under paragraph (1), not less than two shall be centers designated under section 7327 of this title.

(3) Of the facilities designated under paragraph (1), not less than two shall be facilities that are not centers designated under section 7327 of this title.

(4) Subject to the availability of appropriations for such purpose, the Secretary shall es-

tablish and operate an epilepsy center of excellence at each location designated under paragraph (1).

(b) DESIGNATION OF FACILITIES.—(1) In designating locations for epilepsy centers of excellence under subsection (a), the Secretary shall solicit proposals from Department health care facilities seeking designation as a location for an epilepsy center of excellence.

(2) The Secretary may not designate a facility as a location for an epilepsy center of excellence under subsection (a) unless the peer review panel established under subsection (c) has determined under that subsection that the proposal submitted by such facility seeking designation as a location for an epilepsy center of excellence is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(3) In choosing from among the facilities meeting the requirements of paragraph (2), the Secretary shall also consider appropriate geographic distribution when designating the epilepsy centers of excellence under subsection (a).

(c) PEER REVIEW PANEL.—(1) The Under Secretary for Health shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of epilepsy centers of excellence under this section.

(2)(A) The membership of the peer review panel shall consist of experts on epilepsy, including post-traumatic epilepsy.

(B) Members of the peer review panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be appointed for a period of two years, as designated by the Under Secretary at the time of appointment.

(3) The peer review panel shall review each proposal submitted to the panel by the Under Secretary for Health and shall submit its views on the relative scientific and clinical merit of each such proposal to the Under Secretary.

(4) The peer review panel shall, in conjunction with the national coordinator designated under subsection (e), conduct regular evaluations of each epilepsy center of excellence established and operated under subsection (a) to ensure compliance with the requirements of this section.

(5) The peer review panel shall not be subject to the Federal Advisory Committee Act.

(d) EPILEPSY CENTER OF EXCELLENCE DEFINED.—In this section, the term "epilepsy center of excellence" means a health care facility that has (or in the foreseeable future can develop) the necessary capacity to function as a center of excellence in research, education, and clinical care activities in the diagnosis and treatment of epilepsy and has (or may reasonably be anticipated to develop) each of the following:

(1) An affiliation with an accredited medical school that provides education and training in neurology, including an arrangement with such school under which medical residents receive education and training in the diagnosis and treatment of epilepsy (including neurosurgery).

(2) The ability to attract the participation of scientists who are capable of ingenuity and creativity in health care research efforts.

(3) An advisory committee composed of veterans and appropriate health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of the center during the period of the operation of such center.

(4) The capability to conduct effectively evaluations of the activities of such center.

(5) The capability to assist in the expansion of the Department's use of information systems and databases to improve the quality and delivery of care for veterans enrolled within the Department's health care system.

(6) The capability to assist in the expansion of the Department telehealth program to develop, transmit, monitor, and review neurological diagnostic tests.

(7) The ability to perform epilepsy research, education, and clinical care activities in collaboration with Department medical facilities that have centers for research, education, and clinical care activities on complex multi-trauma associated with combat injuries established under section 7327 of this title.

(e) NATIONAL COORDINATOR FOR EPILEPSY PROGRAMS.—(1) To assist the Secretary and the Under Secretary for Health in carrying out this section, the Secretary shall designate an individual in the Veterans Health Administration to act as a national coordinator for epilepsy programs of the Veterans Health Administration.

(2) The duties of the national coordinator for epilepsy programs shall include the following:

(A) To supervise the operation of the centers established pursuant to this section.

(B) To coordinate and support the national consortium of providers with interest in treating epilepsy at Department health care facilities lacking such centers in order to ensure better access to state-of-the-art diagnosis, research, clinical care, and education for traumatic brain injury and epilepsy throughout the health care system of the Department.

(C) To conduct, in conjunction with the peer review panel established under subsection (c), regular evaluations of the epilepsy centers of excellence to ensure compliance with the requirements of this section.

(D) To coordinate (as part of an integrated national system) education, clinical care, and research activities within all facilities with an epilepsy center of excellence.

(E) To develop jointly a national consortium of providers with interest in treating epilepsy at Department health care facilities lacking an epilepsy center of excellence in order to ensure better access to state-of-the-art diagnosis, research, clinical care, and education for traumatic brain injury and epilepsy throughout the health care system of the Department. Such consortium should include a designated epilepsy referral clinic in each Veterans Integrated Service Network.

(3) In carrying out duties under this subsection, the national coordinator for epilepsy

programs shall report to the official of the Veterans Health Administration responsible for neurology.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated \$6,000,000 for each of fiscal years 2009 through 2013 for the support of the clinical care, research, and education activities of the epilepsy centers of excellence established and operated pursuant to subsection (a)(2).

(2) There are authorized to be appropriated for each fiscal year after fiscal year 2013 such sums as may be necessary for the support of the clinical care, research, and education activities of the epilepsy centers of excellence established and operated pursuant to subsection (a)(2).

(3) The Secretary shall ensure that funds for such centers are designated for the first three years of operation as a special purpose program for which funds are not allocated through the Veterans Equitable Resource Allocation system.

(4) In addition to amounts authorized to be appropriated under paragraphs (1) and (2) for a fiscal year, the Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(5) In addition to amounts authorized to be appropriated under paragraphs (1) and (2) for a fiscal year, there are authorized to be appropriated such sums as may be necessary to fund the national coordinator established by subsection (e).

(Added Pub. L. 110-387, title IV, § 404(a), Oct. 10, 2008, 122 Stat. 4126.)

REFERENCES IN TEXT

The date of the enactment of the Veterans' Mental Health and Other Care Improvements Act of 2008, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 110-387, which was approved Oct. 10, 2008.

The Federal Advisory Committee Act, referred to in subsec. (c)(5), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—PROTECTION OF PATIENT RIGHTS

§ 7331. Informed consent

The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to the provisions of section 7334 of this title, shall prescribe regulations establishing procedures to ensure that all medical and prosthetic research carried out and, to the maximum extent practicable, all patient care furnished under this title shall be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof.

(Added Pub. L. 94-581, title I, § 111(a)(1), Oct. 21, 1976, 90 Stat. 2849, § 4131; renumbered § 7331 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(A), 402(d)(1), 403(a)(1), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991—Pub. L. 102-40, § 401(a)(4)(A), renumbered section 4131 of this title as this section.

Pub. L. 102-40, § 403(a)(1), substituted "Secretary" for "Administrator".

Pub. L. 102-40, § 402(d)(1), substituted "7334" for "4134".

EFFECTIVE DATE

Subchapter effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as an Effective Date of 1976 Amendment note under section 111 of this title.

§ 7332. Confidentiality of certain medical records

(a)(1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential, and (section 5701 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(2) Paragraph (1) prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a special written consent is required in order for such records to be disclosed.

(b)(1) The content of any record referred to in subsection (a) may be disclosed by the Secretary in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the Secretary.

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed by the Secretary as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C)(i) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local public-health authority charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

(ii) A person to whom a record is disclosed under this paragraph may not redisclose or use

such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(E) To an entity described in paragraph (1)(B) of section 5701(k) of this title, but only to the extent authorized by such section.

(F)(i) To a representative of a patient who lacks decision-making capacity, when a practitioner deems the content of the given record necessary for that representative to make an informed decision regarding the patient's treatment.

(ii) In this subparagraph, the term "representative" means an individual, organization, or other body authorized under section 7331 of this title and its implementing regulations to give informed consent on behalf of a patient who lacks decision-making capacity.

(G) To a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 3990 of the Public Health Service Act (42 U.S.C. 280g-3), to the extent necessary to prevent misuse and diversion of prescription medicines.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) is deceased, the content of any such record may be disclosed by the Secretary only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the Secretary determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed pursuant to section 7334 of this title.

(c) Except as authorized by a court order granted under subsection (b)(2)(D), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

(d) The prohibitions of this section shall continue to apply to records concerning any person who has been a patient or subject, irrespective of whether or when such person ceases to be a patient.

(e) The prohibitions of this section shall not prevent any interchange of records—

(1) within and among those components of the Department furnishing health care to veterans, or determining eligibility for benefits under this title; or

(2) between such components furnishing health care to veterans and the Armed Forces.

(f)(1) Notwithstanding subsection (a) but subject to paragraph (2), a physician or a profes-

sional counselor may disclose information or records indicating that a patient or subject is infected with the human immunodeficiency virus if the disclosure is made to (A) the spouse of the patient or subject, or (B) to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject.

(2)(A) A disclosure under paragraph (1) may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(B) A disclosure under such paragraph may be made by a physician or counselor other than the physician or counselor referred to in subparagraph (A) if such physician or counselor is unavailable by reason of absence or termination of employment to make the disclosure.

(g) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined, in the case of a first offense, up to the maximum amount provided under section 5701(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 5701(f) of this title for a subsequent offense under that section.

(Added Pub. L. 94-581, title I, §111(a)(1), Oct. 21, 1976, 90 Stat. 2849, §4132; amended Pub. L. 100-322, title I, §121, May 20, 1988, 102 Stat. 502; renumbered §7332 and amended Pub. L. 102-40, title IV, §§401(a)(4)(A), 402(d)(1), 403(a)(1), (2), (4), (5), May 7, 1991, 105 Stat. 221, 239; Pub. L. 109-461, title II, §204(b), Dec. 22, 2006, 120 Stat. 3411; Pub. L. 111-163, title V, §504, May 5, 2010, 124 Stat. 1157; Pub. L. 112-74, div. H, title II, §230(b), Dec. 23, 2011, 125 Stat. 1159.)

AMENDMENTS

2011—Subsec. (b)(2)(G). Pub. L. 112-74 added subpar. (G).

2010—Subsec. (b)(2)(F). Pub. L. 111-163 added subpar. (F).

2006—Subsec. (b)(2)(E). Pub. L. 109-461 added subpar. (E).

1991—Pub. L. 102-40, §401(a)(4)(A), renumbered section 4132 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsections (e) and (f)” and after “subsection (b)”.

Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-40, §402(d)(1), substituted “5701” for “3301”.

Subsec. (a)(2). Pub. L. 102-40, §403(a)(4), struck out “of this subsection” after “Paragraph (1)”.

Subsec. (b)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)”.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

Subsec. (b)(2). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)” in introductory provisions.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in introductory provisions.

Subsec. (b)(3). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)”.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-40, §402(d)(1), substituted “7334” for “4134”.

Subsec. (c). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (b)(2)(D)” and after “subsection (a)”.

Subsec. (e)(1). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Subsec. (f)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)” and “of this subsection” after “paragraph (2)”.

Subsec. (f)(2)(A). Pub. L. 102-40, §403(a)(4), struck out “of this subsection” after “paragraph (1)”.

Subsec. (f)(2)(B). Pub. L. 102-40, §403(a)(5), struck out “of this paragraph” after “subparagraph (A)”.

Subsec. (g). Pub. L. 102-40, §402(d)(1), substituted “5701(f)” for “3301(f)” in two places.

1988—Subsec. (a). Pub. L. 100-322, §121(a), (e)(1), designated existing provisions as par. (1), inserted “infection with the human immunodeficiency virus,” after “alcohol abuse,” substituted “subsections (e) and (f)” for “subsection (e)”, and added par. (2).

Subsec. (b)(1). Pub. L. 100-322, §121(b)(1), struck out “pursuant to section 4134 of this title” before period at end.

Subsec. (b)(2)(C), (D). Pub. L. 100-322, §121(b)(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c). Pub. L. 100-322, §121(e)(2), substituted “subsection (b)(2)(D)” for “subsection (b)(2)(C)”.

Subsec. (f). Pub. L. 100-322, §121(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-322, §121(c)(1), (d), redesignated subsec. (f) as (g) and substituted “shall be fined, in the case of a first offense, up to the maximum amount provided under section 3301(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 3301(f) of this title for a subsequent offense under that section.” for “shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense”.

§ 7333. Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus

(a) Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers or who are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any Department health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.

(b) The Secretary shall prescribe regulations for the enforcement of this section. Such regulations, with respect to the admission and treatment of such veterans who are alcohol or drug abusers, shall be prescribed in accordance with section 7334 of this title.

(Added Pub. L. 94-581, title I, §111(a)(1), Oct. 21, 1976, 90 Stat. 2850, §4133; amended Pub. L. 100-322, title I, §122(a), May 20, 1988, 102 Stat. 503; renumbered §7333 and amended Pub. L. 102-40, title IV, §§401(a)(4)(A), 402(d)(1), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239.)

AMENDMENTS

1991—Pub. L. 102-40, §401(a)(4)(A), renumbered section 4133 of this title as this section.

Subsec. (a). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Subsec. (b). Pub. L. 102-40, §§402(d)(1), 403(a)(1), substituted “Secretary” for “Administrator” and “7334” for “4134”.

1988—Pub. L. 100-322 substituted “Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus” for “Non-discrimination in the admission of alcohol and drug abusers to Veterans’ Administration health care facilities” as section catchline, and amended text generally. Prior to amendment, text read as follows: “Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment, solely because of their alcohol or drug abuse or dependence, by any Veterans’ Administration health care facility. The Administrator, pursuant to the provisions of section 4134 of this title, shall prescribe regulations for the enforcement of this nondiscrimination policy with respect to the admission and treatment of such eligible veterans who are alcohol or drug abusers.”

RESTRICTION ON TESTING FOR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS

Pub. L. 100-322, title I, §124, May 20, 1988, 102 Stat. 505, as amended by Pub. L. 102-83, §6(j)(3), Aug. 6, 1991, 105 Stat. 409, provided that the Secretary of Veterans Affairs could not conduct a widespread program to test for the human immunodeficiency virus unless funds for the program were appropriated, with an exception for voluntary testing, prior to repeal by Pub. L. 110-387, title IV, §407, Oct. 10, 2008, 122 Stat. 4130.

§ 7334. Regulations

(a) Regulations prescribed by the Secretary under section 7331 of this title, section 7332 of this title with respect to the confidentiality of alcohol and drug abuse medical records, and section 7333 of this title with respect to alcohol or drug abusers shall, to the maximum extent feasible consistent with other provisions of this title, make applicable the regulations described in subsection (b) to the conduct of research and to the provision of hospital care, nursing home care, domiciliary care, and medical services under this title.

(b) The regulations referred to in subsection (a) are—

(1) regulations governing human experimentation and informed consent prescribed by the Secretary of Health and Human Services, based on the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, established by section 201 of the National Research Act (Public Law 93-348; 88 Stat. 348); and

(2) regulations governing (A) the confidentiality of drug and alcohol abuse medical records, and (B) the admission of drug and alcohol abusers to private and public hospitals, prescribed pursuant to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4551 et seq.) and the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1101 et seq.).

(c) Regulations prescribed by the Secretary under sections 7331, 7332, and 7333 of this title may contain such definitions, and may provide for such safeguards and procedures (including procedures and criteria for the issuance and scope of court orders under section 7332(b)(2)(C)¹ of this title), as are necessary to prevent cir-

cumvention or evasion of such regulations or to facilitate compliance with such regulations.

(d) In prescribing and implementing such regulations, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services and, as appropriate, with the President (or the delegate of the President) in order to achieve the maximum possible coordination of the regulations, and the implementation of the regulations, which they and the Secretary prescribe.

(Added Pub. L. 94-581, title I, §111(a)(1), Oct. 21, 1976, 90 Stat. 2851, §4134; amended Pub. L. 97-295, §4(87), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 100-322, title I, §122(a), May 20, 1988, 102 Stat. 504; renumbered §7334 and amended Pub. L. 102-40, title IV, §§401(a)(4)(A), 402(d)(1), 403(a)(1), (4), May 7, 1991, 105 Stat. 221, 239.)

REFERENCES IN TEXT

Section 201 of the National Research Act, referred to in subsec. (b)(1), is section 201 of Pub. L. 93-348, title II, July 12, 1974, 88 Stat. 348, as amended, which was set out as a note under section 289-1 of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 95-622, title III, §302(b), Nov. 9, 1978, 92 Stat. 3442.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4551 et seq.), referred to in subsec. (b)(2), is Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to chapter 60 (§4541 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of Title 42 and Tables.

The Drug Abuse Office and Treatment Act of 1972, referred to in subsec. (b)(2), which was redesignated the Drug Abuse Prevention, Treatment, and Rehabilitation Act, is Pub. L. 92-255, Mar. 21, 1972, 86 Stat. 65, as amended, which is classified principally to chapter 16 (§1101 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 21 and Tables.

Section 7332(b)(2)(C) of this title, referred to in subsec. (c), was formerly a reference to section 4132(b)(2)(C) of this title which was redesignated section 4132(b)(2)(D) by Pub. L. 100-322, title I, §121(b)(2)(A), May 20, 1988, 102 Stat. 502, and subsequently renumbered section 7332(b)(2)(D) by Pub. L. 102-40, title IV, §401(a)(4)(A), May 7, 1991, 105 Stat. 221. The reference to section 4132(b)(2)(C) in subsec. (c) was amended to reflect the renumbering by Pub. L. 102-40 but not the redesignation by Pub. L. 100-322.

AMENDMENTS

1991—Pub. L. 102-40, §401(a)(4)(A), renumbered section 4134 of this title as this section.

Subsec. (a). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (b)”.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator”.

Pub. L. 102-40, §402(d)(1), substituted “7331” for “4131”, “7332” for “4132”, and “7333” for “4133”.

Subsec. (b). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator”.

Pub. L. 102-40, §402(d)(1), substituted “7331, 7332, and 7333” for “4131, 4132, and 4133” and “7332(b)(2)(C)” for “4132(b)(2)(C)”.

Subsec. (d). Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

1988—Pub. L. 100-322 amended section generally, substituting provisions consisting of subsecs. (a) to (d) for former provisions consisting of subsecs. (a) and (b).

1982—Subsec. (a). Pub. L. 97-295 substituted “Health and Human Services” for “Health, Education, and Wel-

¹ See References in Text note below.

fare" wherever appearing, and substituted "the President (or the delegate of the President)" for "the Director of the Office of Drug Abuse Policy (or any successor authority)".

SUBCHAPTER IV—RESEARCH CORPORATIONS

PRIOR PROVISIONS

A prior subchapter IV of this chapter consisted of sections 4141 and 4142 prior to amendment by Pub. L. 102-40, title IV, § 401(c)(1), May 7, 1991, 105 Stat. 238, which struck out the subchapter heading "PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL", renumbered sections 4141 and 4142 as sections 7451 and 7452 of this title, respectively, and transferred those sections to subchapter IV of chapter 74 of this title.

A prior subchapter V of this chapter consisting of sections 4151 and 4152, related to quality assurance, prior to repeal by Pub. L. 102-40, title IV, § 401(a)(2)(A), May 7, 1991, 105 Stat. 210. See Prior Provisions notes set out under section 4114 of this title.

A prior subchapter VI of this chapter was redesignated as this subchapter.

AMENDMENTS

1991—Pub. L. 102-40, title IV, § 401(a)(2)(B), May 7, 1991, 105 Stat. 210, redesignated subchapter VI of this chapter as this subchapter. For disposition of former subchapter IV of this chapter, see Prior Provisions note above.

§ 7361. Authority to establish; status

(a) The Secretary may authorize the establishment at any Department medical center of a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research and education at the medical center. Such a corporation may be established to facilitate either research or education or both research and education.

(b)(1) Subject to paragraph (2), a corporation established under this subchapter may facilitate the conduct of research, education, or both at more than one medical center. Such a corporation shall be known as a "multi-medical center research corporation".

(2) The board of directors of a multi-medical center research corporation under this subsection shall include the official at each Department medical center concerned who is, or who carries out the responsibilities of, the medical center director of such center as specified in section 7363(a)(1)(A)(i) of this title.

(3) In facilitating the conduct of research, education, or both at more than one Department medical center under this subchapter, a multi-medical center research corporation may administer receipts and expenditures relating to such research, education, or both, as applicable, performed at the Department medical centers concerned.

(c) Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable Department medical center is located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State. In the case of any multi-medical center research corporation that facilitates the conduct of research, education, or both at Department medical centers located in different States, the corporation shall be established in accordance with the nonprofit corpora-

tion laws of the State in which one of such Department medical centers is located.

(d)(1) Except as otherwise provided in this subchapter or under regulations prescribed by the Secretary, any corporation established under this subchapter, and its officers, directors, and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives that apply generally to private nonprofit corporations.

(2) A corporation under this subchapter is not—

(A) owned or controlled by the United States; or

(B) an agency or instrumentality of the United States.

(e) If by the end of the four-year period beginning on the date of the establishment of a corporation under this subchapter the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

(f) A corporation established under this subchapter may act as a multi-medical center research corporation under this subchapter in accordance with subsection (b) if—

(1) the board of directors of the corporation approves a resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department medical center or medical centers concerned; and

(2) the Secretary approves the resolution of the corporation under paragraph (1).

(Added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 510, § 4161; renumbered § 7361 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102-291, § 3(a), May 20, 1992, 106 Stat. 179; Pub. L. 104-262, title III, § 343(b), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-117, title II, § 204(a), Nov. 30, 1999, 113 Stat. 1562; Pub. L. 111-163, title VIII, § 801(a), (b)(1), (c), (d), May 5, 2010, 124 Stat. 1175, 1176.)

REFERENCES IN TEXT

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-163, § 801(c)(1), struck out "Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations." after "the medical center."

Subsecs. (b) to (d). Pub. L. 111-163, § 801(a)(1)(B), (b)(1), (c)(2), added subsecs. (b) to (d). Former subsec. (b) redesignated (e).

Subsec. (e). Pub. L. 111-163, § 801(d), inserted "section 501(c)(3) of" after "exempt from taxation under".

Pub. L. 111-163, § 801(a)(1)(A), redesignated subsec. (b) as (e).

Subsec. (f). Pub. L. 111-163, § 801(a)(2), added subsec. (f).

1999—Subsec. (a). Pub. L. 106-117 inserted "and education" after "research" and inserted at end "Such a corporation may be established to facilitate either research or education or both research and education."

1996—Subsec. (b). Pub. L. 104-262 struck out “section 501(c)(3) of” before “the Internal Revenue Code of 1986”.

1992—Subsec. (b). Pub. L. 102-291 substituted “four-year period” for “three-year period”.

1991—Pub. L. 102-40, § 401(a)(4)(B), renumbered section 4161 of this title as this section.

Subsec. (a). Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator” in two places.

Subsec. (b). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator”.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3(c) of Pub. L. 102-291 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 7368 of this title] shall take effect as of October 1, 1991.”

RATIFICATION OF ACTIONS OF SECRETARY OF VETERANS AFFAIRS DURING LAPSED PERIOD

Section 3(d) of Pub. L. 102-291 provided that: “The following actions of the Secretary of Veterans Affairs during the period beginning on October 1, 1991, and ending on the date of the enactment of this Act [May 20, 1992] are hereby ratified:

“(1) A failure to dissolve a nonprofit corporation established under section 7361(a) of title 38, United States Code, that, within the three-year period beginning on the date of the establishment of the corporation, was not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)].

“(2) The establishment of a nonprofit corporation for approved research under section 7361(a) of title 38, United States Code.”

§ 7362. Purpose of corporations

(a) A corporation established under this subchapter shall be established to provide a flexible funding mechanism for the conduct of approved research and education at one or more Department medical centers and to facilitate functions related to the conduct of research as described in section 7303(a) of this title and education and training as described in sections 7302, 7471, 8154, and 1701(6)(B)¹ of this title in conjunction with the applicable Department medical center or centers.

(b) For purposes of this section, the term “education” includes education and training and means the following:

(1) In the case of employees of the Veterans Health Administration, such term means work-related instruction or other learning experiences to—

- (A) improve performance of current duties;
- (B) assist employees in maintaining or gaining specialized proficiencies; and
- (C) expand understanding of advances and changes in patient care, technology, and health care administration.

(2) In the case of veterans under the care of the Veterans Health Administration, such term means instruction or other learning experiences related to improving and maintaining the health of veterans and includes education and training for patients and families and guardians of patients.

(Added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 510, § 4162; renumbered § 7362 and

amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(1)–(3), May 7, 1991, 105 Stat. 221, 239; Pub. L. 106-117, title II, § 204(b), Nov. 30, 1999, 113 Stat. 1562; Pub. L. 111-163, title VIII, §§ 802, 804(b), May 5, 2010, 124 Stat. 1176, 1179.)

REFERENCES IN TEXT

Section 1701(6)(B) of this title, referred to in subsec. (a), which related to inclusion of consultation, professional counseling, training, and mental health services in definition of “medical services”, was repealed and a new section 1701(6)(B) relating to dental services and appliances was enacted, by Pub. L. 107-135, title II, § 208(a)(1)(A), (C), Jan. 23, 2002, 115 Stat. 2461.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-163, § 804(b), struck out last sentence which read as follows: “Any funds received by the Secretary for the conduct of research or education at the medical center other than funds appropriated to the Department may be transferred to and administered by the corporation for these purposes.”

Pub. L. 111-163, § 802(a), in first sentence, substituted “A corporation established under this subchapter shall be established to provide a flexible funding mechanism for the conduct of approved research and education at one or more Department medical centers and to facilitate functions related to the conduct of” for “Any corporation established under this subchapter shall be established solely to facilitate” and inserted “or centers” before period at end.

Subsec. (b). Pub. L. 111-163, § 802(b), substituted “the term ‘education’ includes education and training and” for “the term ‘education and training’” in introductory provisions.

Subsec. (b)(1). Pub. L. 111-163, § 802(c), struck out concluding provisions which read as follows: “Such term includes (in the case of such employees) education and training conducted as part of a residency or other program designed to prepare an individual for an occupation or profession.”

Subsec. (b)(2). Pub. L. 111-163, § 802(d), substituted “and includes education and training for patients and families” for “to patients and to the families”.

1999—Pub. L. 106-117 designated existing provisions as subsec. (a), in first sentence, inserted “and education and training as described in sections 7302, 7471, 8154, and 1701(6)(B) of this title” after “7303(a) of this title”, in second sentence, inserted “or education” after “research” and substituted “these purposes” for “that purpose”, and added subsec. (b).

1991—Pub. L. 102-40, § 401(a)(4)(B), renumbered section 4162 of this title as this section.

Pub. L. 102-40, § 403(a)(3), substituted “7303(a)” for “4101(c)(1)”.

Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans’ Administration” in two places.

Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator”.

§ 7363. Board of directors; executive director

(a) The Secretary shall provide for the appointment of a board of directors for any corporation established under this subchapter. The board shall include—

(1) with respect to the Department medical center—

- (A)(i) the director (or directors of each Department medical center, in the case of a multi-medical center research corporation);
- (ii) the chief of staff; and
- (iii) as appropriate for the activities of such corporation, the associate chief of staff for research and the associate chief of staff for education; or

¹ See References in Text note below.

(B) in the case of a Department medical center at which one or more of the positions referred to in subparagraph (A) do not exist, the official or officials who are responsible for carrying out the responsibilities of such position or positions at the Department medical center; and

(2) subject to subsection (c), not less than two members who are not officers or employees of the Federal Government and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to the operations of the corporation.

(b) Each such corporation shall have an executive director who shall be appointed by the board of directors with the concurrence of the Under Secretary for Health of the Department. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

(c) An individual appointed under subsection (a)(2) to the board of directors of a corporation established under this subchapter may not be affiliated with or employed by any entity that is a source of funding for research or education by the Department unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under the Internal Revenue Code of 1986.

(Added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 510, § 4163; renumbered § 7363 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(1), (2), (4), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title III, § 343(b), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-117, title II, § 204(c), Nov. 30, 1999, 113 Stat. 1562; Pub. L. 111-163, title VIII, § 803, May 5, 2010, 124 Stat. 1177.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-163, § 803(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the director of the medical center, the chief of staff of the medical center, and as appropriate, the assistant chief of staff for research for the medical center and the assistant chief of staff for education for the medical center, or, in the case of a facility at which such positions do not exist, those officials who are responsible for carrying out the responsibilities of the medical center director, chief of staff, and, as appropriate, the assistant chief of staff for research and the assistant chief of staff for education; and”.

Subsec. (a)(2). Pub. L. 111-163, § 803(b), inserted “not less than two” before “members who are not” and substituted “and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to the operations of the corporation.” for “and who are familiar with issues involving medical and scientific research or education, as appropriate.”

Subsec. (c). Pub. L. 111-163, § 803(c), substituted “or employed by” for “, employed by, or have any other financial relationship with”.

1999—Subsec. (a)(1). Pub. L. 106-117, § 204(c)(1), substituted “as appropriate, the assistant chief of staff for research for the medical center and the assistant chief of staff for education for the medical center, or, in the

case of a facility at which such positions do not exist, those officials who are responsible for carrying out the responsibilities of the medical center director, chief of staff, and, as appropriate, the assistant chief of staff for research and the assistant chief of staff for education; and” for “the assistant chief of staff for research of the medical center; and”.

Subsec. (a)(2). Pub. L. 106-117, § 204(c)(2), inserted “or education, as appropriate” after “research”.

Subsec. (c). Pub. L. 106-117, § 204(c)(3), inserted “or education” after “research”.

1996—Subsec. (c). Pub. L. 104-262 struck out “section 501(c)(3) of” before “the Internal Revenue Code of 1986”.

1992—Subsec. (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40, § 401(a)(4)(B), renumbered section 4163 of this title as this section.

Subsec. (a). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator” in introductory provisions.

Subsec. (a)(2). Pub. L. 102-40, § 403(a)(4), struck out “of this section” after “subsection (c)”.

Subsec. (b). Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans’ Administration”.

Subsec. (c). Pub. L. 102-40, § 403(a)(4), struck out “of this section” after “subsection (a)(2)”.

Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans’ Administration”.

§ 7364. General powers

(a) IN GENERAL.—(1) A corporation established under this subchapter may, solely to carry out the purposes of this subchapter—

(A) accept, administer, retain, and spend funds derived from gifts, contributions, grants, fees, reimbursements, and bequests from individuals and public and private entities;

(B) enter into contracts and agreements with individuals and public and private entities;

(C) subject to paragraph (2), set fees for education and training facilitated under section 7362 of this title, and receive, retain, administer, and spend funds in furtherance of such education and training;

(D) reimburse amounts to the applicable appropriation account of the Department for the Office of General Counsel for any expenses of that Office in providing legal services attributable to research and education agreements under this subchapter; and

(E) employ such employees as the corporation considers necessary for such purposes and fix the compensation of such employees.

(2) Fees charged pursuant to paragraph (1)(C) for education and training described in that paragraph to individuals who are officers or employees of the Department may not be paid for by any funds appropriated to the Department.

(3) Amounts reimbursed to the Office of General Counsel under paragraph (1)(D) shall be available for use by the Office of the General Counsel only for staff and training, and related travel, for the provision of legal services described in that paragraph and shall remain available for such use without fiscal year limitation.

(b) TRANSFER AND ADMINISTRATION OF FUNDS.—(1) Except as provided in paragraph (2), any funds received by the Secretary for the conduct of research or education at a Department medical center or centers, other than funds appro-

priated to the Department, may be transferred to and administered by a corporation established under this subchapter for such purposes.

(2) A Department medical center may reimburse the corporation for all or a portion of the pay, benefits, or both of an employee of the corporation who is assigned to the Department medical center if the assignment is carried out pursuant to subchapter VI of chapter 33 of title 5.

(3) A Department medical center may retain and use funds provided to it by a corporation established under this subchapter. Such funds shall be credited to the applicable appropriation account of the Department and shall be available, without fiscal year limitation, for the purposes of that account.

(c) **RESEARCH PROJECTS.**—Except for reasonable and usual preliminary costs for project planning before its approval, a corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a scientific review process.

(d) **EDUCATION ACTIVITIES.**—Except for reasonable and usual preliminary costs for activity planning before its approval, a corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.

(e) **POLICIES AND PROCEDURES.**—The Under Secretary for Health may prescribe policies and procedures to guide the spending of funds by corporations established under this subchapter that are consistent with the purpose of such corporations as flexible funding mechanisms and with Federal and State laws and regulations, and executive orders, circulars, and directives that apply generally to the receipt and expenditure of funds by nonprofit organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 511, § 4164; renumbered § 7364 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-117, title II, § 204(d), Nov. 30, 1999, 113 Stat. 1562; Pub. L. 111-163, title VIII, § 804(a), May 5, 2010, 124 Stat. 1177.)

REFERENCES IN TEXT

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

AMENDMENTS

2010—Pub. L. 111-163 amended section generally. Prior to amendment, section related to the general powers of a corporation established under this subchapter.

1999—Subsec. (c). Pub. L. 106-117 added subsec. (c).

1992—Subsec. (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40, § 401(a)(4)(B), renumbered section 4164 of this title as this section.

Subsec. (b). Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans’ Administration”.

[§ 7364A. Renumbered § 7365]

§ 7365. Coverage of employees under certain Federal tort claims laws

(a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the Government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:

- (1) Section 1346(b) of title 28.
- (2) Chapter 171 of title 28.
- (3) Section 7316 of this title.

(b) An employee described in this subsection is an employee who—

- (1) has an appointment with the Department, whether with or without compensation;
- (2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for research or education and training; and
- (3) performs such duties under the supervision of Department personnel.

(Added Pub. L. 108-170, title IV, § 402(a)(1), Dec. 6, 2003, 117 Stat. 2061, § 7364A; renumbered § 7365, Pub. L. 111-163, title VIII, § 805(a), May 5, 2010, 124 Stat. 1179.)

PRIOR PROVISIONS

A prior section 7365, added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 511, § 4165; renumbered § 7365, Pub. L. 102-40, title IV, § 401(a)(4)(B), May 7, 1991, 105 Stat. 221, which required any corporation established under this subchapter to be subject to applicable State law, was repealed by Pub. L. 111-163, title VIII, § 801(b)(2), May 5, 2010, 124 Stat. 1176.

AMENDMENTS

2010—Pub. L. 111-163 renumbered section 7364A of this title as this section.

§ 7366. Accountability and oversight

(a)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.

(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(b)(1) Each corporation shall submit to the Secretary each year a report providing a detailed statement of the operations, activities, and accomplishments of the corporation during that year.

(2)(A) A corporation with revenues in excess of \$500,000 for any year shall obtain an audit of the corporation for that year.

(B) A corporation with annual revenues between \$100,000 and \$500,000 shall obtain an audit of the corporation at least once every three years.

(C) Any audit under this paragraph shall be performed by an independent auditor.

(3) The corporation shall include in each report to the Secretary under paragraph (1) the following:

(A) The most recent audit of the corporation under paragraph (2).

(B) The most recent Internal Revenue Service Form 990 "Return of Organization Exempt from Income Tax" or equivalent and the applicable schedules under such form.

(c) Each director, officer, and employee of a corporation established under this subchapter shall be subject to a conflict of interest policy adopted by that corporation.

(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations established under this subchapter. The report shall set forth the following information:

(1) The location of each corporation.

(2) The amount received by each corporation during the previous year, including—

(A) the total amount received;

(B) the amount received from governmental entities for research and the amount received from governmental entities for education;

(C) the amount received from all other sources for research and the amount received from all other sources for education; and

(D) if an amount received from a source referred to in subparagraph (C) exceeded \$25,000, information that identifies the source.

(3) The amount expended by each corporation during the year, including—

(A) the amount expended for salary for research staff, the amount expended for salary for education staff, and the amount expended for salary for support staff;

(B) the amount expended for direct support of research and the amount expended for direct support of education; and

(C) if the amount expended with respect to any payee exceeded \$50,000, information that identifies the payee.

(4) The amount expended by each corporation during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.

(Added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 511, § 4166; renumbered § 7366 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 104-262, title III, § 343(c)-(e), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-117, title II, § 204(e), Nov. 30, 1999, 113 Stat. 1563; Pub. L. 107-103, title V, § 509(f), Dec. 27, 2001, 115 Stat. 997; Pub. L. 108-170, title IV, § 402(b), Dec. 6, 2003, 117 Stat. 2062; Pub. L. 111-163, title VIII, § 806, May 5, 2010, 124 Stat. 1179.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(1)(B), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat.

1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-163, § 806(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. A corporation with revenues in excess of \$300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between \$10,000 and \$300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit in the corporation's report to the Secretary for that year."

Subsec. (c). Pub. L. 111-163, § 806(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(c)(1) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions.

"(2) Each corporation established under this subchapter shall each year submit to the Secretary a statement signed by the executive director of the corporation verifying that each director and employee has certified awareness of the laws and regulations referred to in paragraph (1) and of the consequences of violations of those laws and regulations in the same manner as Federal employees are required to so certify."

Subsec. (d)(3)(C). Pub. L. 111-163, § 806(c), substituted "\$50,000" for "\$35,000".

2003—Subsec. (c). Pub. L. 108-170 inserted "(1)" after "(c)", substituted "any year shall be subject" for "any year—(1) shall be subject" and "functions," for "functions; and", added par. (2), and struck out former par. (2) which read as follows: "shall submit to the Secretary a statement signed by the executive director of the corporation certifying that each director and employee is aware of, and has complied with, such laws and regulations in the same manner as Federal employees are required to."

2001—Subsec. (d)(2)(D). Pub. L. 107-103 made technical correction to directory language of Pub. L. 106-117, § 204(e)(3). See 1999 Amendment note below.

1999—Subsec. (d)(2)(B). Pub. L. 106-117, § 204(e)(1), inserted "for research and the amount received from governmental entities for education" before the semicolon at end.

Subsec. (d)(2)(C). Pub. L. 106-117, § 204(e)(2), inserted "for research and the amount received from all other sources for education" before "; and".

Subsec. (d)(2)(D). Pub. L. 106-117, § 204(e)(3), as amended by Pub. L. 107-103, § 509(f), substituted "an amount received" for "the amount received".

Subsec. (d)(3)(A). Pub. L. 106-117, § 204(e)(4), substituted ", the amount expended for salary for education staff, and the amount expended" for "and".

Subsec. (d)(3)(B). Pub. L. 106-117, § 204(e)(5), inserted "and the amount expended for direct support of education" after "research".

Subsec. (d)(4). Pub. L. 106-117, § 204(e)(6), added par. (4).

1996—Subsec. (b). Pub. L. 104-262, § 343(c), substituted "A corporation with revenues in excess of \$300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between \$10,000 and \$300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit" for "The corporation

shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report”.

Subsec. (c)(2). Pub. L. 104-262, § 343(d), substituted “a statement signed by the executive director of the corporation certifying that each director and” for “an annual statement signed by the director or employee certifying that the director or”.

Subsec. (d). Pub. L. 104-262, § 343(e), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.”

1991—Pub. L. 102-40, § 401(a)(4)(B), renumbered section 4166 of this title as this section.

Subsec. (a)(1)(A). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator”.

Subsec. (a)(1)(B). Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans' Administration” in two places.

Subsec. (b). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator” in two places.

Subsec. (c). Pub. L. 102-40, § 403(a)(2), substituted “Department” for “Veterans' Administration” in introductory provisions.

Subsec. (c)(2). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 102-40, § 403(a)(1), substituted “Secretary” for “Administrator”.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-103, title V, § 509(f), Dec. 27, 2001, 115 Stat. 997, provided that the amendment made by section 509(f) is effective Nov. 30, 1999, and as if included in Pub. L. 106-117 as originally enacted.

[§ 7367. Repealed. Pub. L. 107-14, § 8(a)(14)(A), June 5, 2001, 115 Stat. 35]

Section, added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 512, § 4167; renumbered § 7367 and amended Pub. L. 102-40, title IV, §§ 401(a)(4)(B), 403(a)(1), May 7, 1991, 105 Stat. 221, 239, required a report to Congress on the experience through the end of fiscal year 1990 under this subchapter.

[§ 7368. Repealed. Pub. L. 110-387, title VIII, § 806(a), Oct. 10, 2008, 122 Stat. 4141]

Section, added Pub. L. 100-322, title II, § 204(a), May 20, 1988, 102 Stat. 512, § 4168; renumbered § 7368, Pub. L. 102-40, title IV, § 401(a)(4)(B), May 7, 1991, 105 Stat. 221; amended Pub. L. 102-291, § 3(b), May 20, 1992, 106 Stat. 179; Pub. L. 104-262, title III, § 343(a), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106-419, title IV, § 402(g), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108-170, title IV, § 402(c), Dec. 6, 2003, 117 Stat. 2062, related to the expiration of authority for corporations to be established under this subchapter.

CHAPTER 74—VETERANS HEALTH ADMINISTRATION—PERSONNEL

SUBCHAPTER I—APPOINTMENTS

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AMENDMENTS

2010—Pub. L. 111-163, title VI, § 602(a)(2), May 5, 2010, 124 Stat. 1173, added item 7459.

2004—Pub. L. 108-445, §§ 3(g), 4(a)(2), Dec. 3, 2004, 118 Stat. 2643, 2645, substituted “PAY FOR PHYSICIANS AND DENTISTS” for “SPECIAL PAY FOR PHYSICIANS AND DENTISTS” in item for subchapter III, “Pay” for “Special pay: authority” in item 7431, “Pay of Under Secretary for Health” for “Special pay: written agreements” in item 7432, “Administrative matters” for “Special pay: full-time physicians” in item 7433, struck out items 7434 “Special pay: part-time physicians”, 7435 “Special pay: full-time dentists”, 7436 “Special pay: part-time dentists”, 7437 “Special pay: general provisions”, 7438 “Special pay: coordination with other benefits laws”, 7439 “Periodic review of pay of physicians and dentists; quadrennial report”, and 7440 “Annual report”, and added item 7456A.

1991—Pub. L. 102-40, title I, §§ 102, 103(a)(2), title II, § 203(b), title IV, § 401(b)(1), May 7, 1991, 105 Stat. 187, 199, 207, 221, added chapter heading and analysis.

SUBCHAPTER I—APPOINTMENTS

§ 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:

(A) Such other classes of health care occupations—

(i) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;

(ii) that¹ would otherwise receive basic pay in accordance with the General Schedule under section 5332 of title 5;

(iii) provide, as determined by the Secretary, direct patient care services or services incident to direct patient services; and

(iv) would not otherwise be available to provide medical care or treatment for veterans.

(B) Not later than 45 days before the Secretary appoints any personnel for a class of health care occupations that is not specifically listed in this paragraph, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate, the Committee on Veterans' Affairs of the House of Representatives, and the Office of Management and Budget notice of such appointment.

(C) Before submitting notice under subparagraph (B), the Secretary shall solicit

comments from any labor organization representing employees in such class and include such comments in such notice.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§ 301(a)(1), 302(a), Dec. 6, 2003, 117 Stat. 2054, 2057; Pub. L. 108-422, title V, § 502, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109-461, title II, § 201(a), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 111-163, title VI, § 601(a), May 5, 2010, 124 Stat. 1167.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4104 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Par. (3). Pub. L. 111-163 inserted “nurse assistants,” after “licensed practical or vocational nurses,”, substituted “blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:” for “and blind rehabilitation outpatient specialists,”, and added subpars. (A) to (C).

2006—Par. (3). Pub. L. 109-461 inserted “marriage and family therapists, licensed professional mental health counselors,” after “social workers,”.

2004—Par. (3). Pub. L. 108-422 substituted “technologists, dental hygienists, dental assistants” for “and dental technologists” and “technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists” for “technicians, therapeutic radiologic technicians, and social workers”.

2003—Pub. L. 108-170, § 302(a)(1), substituted “health” for “medical” in introductory provisions.

Par. (1). Pub. L. 108-170, § 302(a)(2), inserted “chiropractors,” after “podiatrists,”.

Par. (2). Pub. L. 108-170, § 301(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: “Psychologists (other than those described in paragraph (3)), dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists.”

Par. (3). Pub. L. 108-170, § 301(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: “Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(a) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

PRIOR APPOINTMENTS OF CERTAIN PERSONNEL

Pub. L. 108-170, title III, § 301(a)(2), Dec. 6, 2003, 117 Stat. 2055, provided that: “Personnel appointed to the Veterans Health Administration before the date of the enactment of this Act [Dec. 6, 2003] who are in an occupational category of employees specified in paragraph (3) of section 7401 of title 38, United States Code, by reason of the amendment made by paragraph (1)(B) of this subsection [amending this section] shall, as of such date, be deemed to have been appointed to the Administration under such paragraph (3).”

¹ So in original. The word “that” probably should not appear.

§ 7402. Qualifications of appointees

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) **PHYSICIAN.**—To be eligible to be appointed to a physician position, a person must—

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) **DENTIST.**—To be eligible to be appointed to a dentist position, a person must—

(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and

(B) be licensed to practice dentistry in a State.

(3) **NURSE.**—To be eligible to be appointed to a nurse position, a person must—

(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and

(B) be registered as a graduate nurse in a State.

(4) **DIRECTOR OF A HOSPITAL, DOMICILIARY, CENTER, OR OUTPATIENT CLINIC.**—To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) **PODIATRIST.**—To be eligible to be appointed to a podiatrist position, a person must—

(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and

(B) be licensed to practice podiatry in a State.

(6) **OPTOMETRIST.**—To be eligible to be appointed to an optometrist position, a person must—

(A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and

(B) be licensed to practice optometry in a State.

(7) **PHARMACIST.**—To be eligible to be appointed to a pharmacist position, a person must—

(A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and

(B) be registered as a pharmacist in a State.

(8) **PSYCHOLOGIST.**—To be eligible to be appointed to a psychologist position, a person must—

(A) hold a doctoral degree in psychology from a college or university approved by the Secretary,

(B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and

(C) be licensed or certified as a psychologist in a State, except that the Secretary may

waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) **SOCIAL WORKER.**—To be eligible to be appointed to a social worker position, a person must—

(A) hold a master's degree in social work from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary for Health.

(10) **MARRIAGE AND FAMILY THERAPIST.**—To be eligible to be appointed to a marriage and family therapist position, a person must—

(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

(11) **LICENSED PROFESSIONAL MENTAL HEALTH COUNSELOR.**—To be eligible to be appointed to a licensed professional mental health counselor position, a person must—

(A) hold a master's degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice mental health counseling.

(12) **CHIROPRACTOR.**—To be eligible to be appointed to a chiropractor position, a person must—

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(13) **Peer Specialist.**—To be eligible to be appointed to a peer specialist position, a person must—

(A) be a veteran who has recovered or is recovering from a mental health condition; and

(B) be certified by—

(i) a not-for-profit entity engaged in peer specialist training as having met such criteria as the Secretary shall establish for a peer specialist position; or

(ii) a State as having satisfied relevant State requirements for a peer specialist position.

(14) **OTHER HEALTH-CARE POSITIONS.**—To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupa-

tional therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(c) Except as provided in section 7407(a) of this title, a person may not be appointed in the Administration to a position listed in section 7401(1) of this title unless the person is a citizen of the United States.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable the person to carry out the person's health-care responsibilities satisfactorily. Any determination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(e) A person may not serve as Chief of Staff of a Department health-care facility if the person is not serving on a full-time basis.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if—

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either—

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

(g) The Secretary may enter into contracts with not-for-profit entities to provide—

(1) peer specialist training to veterans; and

(2) certification for veterans under subsection (b)(13)(B)(i).

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-86, title III, § 305(a), Aug. 14, 1991, 105 Stat. 417; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-117, title II, § 209, Nov. 30, 1999, 113 Stat. 1569; Pub. L. 106-419, title II, § 205, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, § 302(b), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 109-461, title II, § 201(b), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 110-387, title IV, § 405, Oct. 10, 2008, 122 Stat. 4129.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4105 and 4108(b) of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2008—Subsec. (b)(11). Pub. L. 110-387, § 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (b)(13). Pub. L. 110-387, § 405(a)(2), added par. (13).

Subsec. (b)(14). Pub. L. 110-387, § 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (g). Pub. L. 110-387, § 405(b), added subsec. (g). 2006—Subsec. (b)(10) to (12). Pub. L. 109-461 added par. (10) and the par. (11) relating to licensed professional health counselor and redesignated former par. (10) as (12).

2003—Subsec. (b)(10), (11). Pub. L. 108-170 added par. (10) and redesignated former par. (10) as (11).

2000—Subsec. (b)(9). Pub. L. 106-419 substituted “a person must—” and subpars. (A) and (B) for “a person must hold a master's degree in social work from a college or university approved by the Secretary and satisfy the social worker licensure, certification, or registration requirements, if any, of the State in which the social worker is to be employed, except that the Secretary may waive the licensure, certification, or registration requirement of this paragraph for an individual social worker for a reasonable period, not to exceed 3 years, in order for the social worker to take any actions necessary to satisfy the licensure, certification, or registration requirements of such State.”

1999—Subsec. (f). Pub. L. 106-117 added subsec. (f).

1992—Subsec. (d). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

1991—Subsec. (b)(9), (10). Pub. L. 102-86 added par. (9) and redesignated former par. (9) as (10).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(b) of Pub. L. 102-86 provided that: “The amendment made by subsection (a) [amending this section] does not apply to any person employed as a social worker by the Department of Veterans Affairs on or before the date of the enactment of this Act [Aug. 14, 1991].”

REQUIREMENTS RESPECTING BASIC PROFICIENCY IN SPOKEN AND WRITTEN ENGLISH OF APPOINTEES AFTER NOVEMBER 23, 1977

Section 4(a)(3) of Pub. L. 95-201 provided that: “Notwithstanding any other provision of law, with respect to persons other than those described in subsection (c) of section 4105 and subsection (f) of section 4114 of title 38, United States Code [former sections 4105(c) and 4114(f) of this title, see subsec. (d) of this section and section 7407(d) of this title] (as added by paragraphs (1) and (2) of this subsection), who are appointed after the date of enactment of this Act [Nov. 23, 1977] in the Department of Medicine and Surgery in the Veterans' Administration [now Veterans Health Administration of the Department of Veterans Affairs] in any direct patient-care capacity, and with respect to persons described in such subsections who are appointed after such enactment date and prior to January 1, 1978, the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs], upon the recommendation of the Chief Medical Director [now Under Secretary for Health], shall take appropriate steps to provide reasonable assurance that such persons possess such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable such persons to carry out their health-care responsibilities satisfactorily.”

§ 7403. Period of appointments; promotions

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accord-

ance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

- (A) Physicians.
- (B) Dentists.
- (C) Podiatrists.
- (D) Optometrists.
- (E) Nurses.
- (F) Physician assistants.
- (G) Expanded-function dental auxiliaries.
- (H) Chiropractors.

(b)(1) Except as otherwise provided in this subsection, appointments described in subsection (a) shall be for a probationary period of two years.

(2) With respect to the appointment of a registered nurse under this chapter, paragraph (1) shall apply with respect to such appointment regardless of whether such appointment is on a full-time basis or a part-time basis.

(3) An appointment described in subsection (a) on a part-time basis of a person who has previously served on a full-time basis for the probationary period for the position concerned shall be without a probationary period.

(4) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(d) In determining eligibility for reinstatement in the Federal civil service of persons appointed to positions in the Administration under this chapter who at the time of appointment have a civil-service status, and whose employment in the Administration is terminated, the period of service performed in the Administration shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may—

(A) use the authority in subsection (a) to establish the qualifications for and (subject to paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and

(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees, disciplinary actions, and grievance procedures involving individuals appointed to such positions, whether appointed under this section or section 7405(a)(1)(B) of this title (including similar actions and procedures involving an employee in a probationary status), shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title.

(g)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who—

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall—

(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement—

(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to implement the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

(5) If the Secretary and exclusive employee representatives reach an agreement under paragraph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall—

(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to en-

sure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§ 301(b), 302(c), Dec. 6, 2003, 117 Stat. 2055, 2058; Pub. L. 111-163, title VI, § 601(b), May 5, 2010, 124 Stat. 1168.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-163, § 601(b)(1), substituted "Except as otherwise provided in this subsection, appointments" for "Appointments".

Subsec. (b)(2) to (4). Pub. L. 111-163, § 601(b)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

2003—Subsec. (a)(2)(H). Pub. L. 108-170, § 302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108-170, § 301(b)(1), inserted "reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees," after "adverse actions," "whether appointed under this section or section 7405(a)(1)(B) of this title" after "such positions", and comma after "status".

Subsec. (h). Pub. L. 108-170, § 301(b)(2), added subsec. (h).

1992—Subsec. (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

§ 7404. Grades and pay scales

(a)(1) The annual rates or ranges of rates of basic pay for positions provided in section 7306 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(2) The pay of physicians and dentists serving in positions to which an Executive order applies under paragraph (1) shall be determined under subchapter III of this chapter instead of such Executive order.

(3)(A) The rate of basic pay for a position to which an Executive order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of—

(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Physician grade.
Dentist grade.

NURSE SCHEDULE

Nurse V.
Nurse IV.
Nurse III.
Nurse II.
Nurse I.

CLINICAL PODIATRIST, CHIROPRACTOR, AND
OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(c) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under

section 7306 of this title who is not eligible for pay under subchapter III shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate determined by the Secretary, not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5.

(Added Pub. L. 102-40, title IV, §401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102-405, title II, §206, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, §301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108-170, title III, §302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 108-445, §3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109-461, title II, §202, Dec. 22, 2006, 120 Stat. 3410; Pub. L. 111-163, title VI, §601(d)(1), May 5, 2010, 124 Stat. 1169.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(3)(B)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

Level II of the Executive Schedule, referred to in subsec. (a)(3)(B)(ii), is set out in section 5313 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)–(d) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-163 designated first sentence as par. (1) and second sentence as par. (2), substituted “under paragraph (1)” for “under the preceding sentence” in par. (2), and added par. (3).

2006—Subsec. (d). Pub. L. 109-461, §202(1), substituted “subsection (e), subchapter III, and” for “subchapter III and in”.

Subsec. (e). Pub. L. 109-461, §202(2), added subsec. (e).

2004—Subsec. (a). Pub. L. 108-445, §3(a)(2), inserted at end “The pay of physicians and dentists serving in positions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.”

Subsec. (b). Pub. L. 108-445, §3(a)(1), struck out “(1)” after “(b)”, inserted items relating to Physician grade and Dentist grade under heading “PHYSICIAN AND DENTIST SCHEDULE” and struck out former items under that heading, which read “Director grade”, “Executive grade”, “Chief grade”, “Senior grade”, “Intermediate grade”, “Full grade”, and “Associate grade”, and struck out par. (2). Prior to amendment, par. (2) read as follows: “A person may not hold the director grade in the Physician and Dentist Schedule unless the person is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent), or comparable position. A person may not hold the executive grade in that Schedule unless the person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.”

Subsec. (c). Pub. L. 108-445, §3(f)(1), substituted “pay” for “special pay”.

Subsec. (d). Pub. L. 108-445, §3(f)(2), substituted "pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule." for "pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5315 or 5316 of title 5 for positions in the Executive Schedule, as follows:

"(1) Level IV for the Deputy Under Secretary for Health.

"(2) Level V for all other positions for which such basic pay is paid under this section."

2003—Subsec. (b)(1). Pub. L. 108-170 substituted "CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE" for "CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE" as third center heading in table.

1992—Subsec. (b)(1). Pub. L. 102-585 inserted items relating to Nurse V through I under heading "NURSE SCHEDULE" and struck out former items under that heading, "Director grade", "Senior grade", "Intermediate grade", and "Entry grade".

Subsec. (b)(2). Pub. L. 102-405, §206, inserted ", or comparable position" before period at end of first sentence.

Subsec. (d)(1). Pub. L. 102-405, §302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-163, title VI, §601(d)(2), May 5, 2010, 124 Stat. 1169, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on the first day of the first pay period beginning after the day that is 180 days after the date of the enactment of this Act [May 5, 2010]."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 308 of Pub. L. 102-585 provided that: "The amendments made by sections 301, 302, 303, and 304 [amending this section and sections 7451 and 7452 of this title] shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 4, 1992]."

ADJUSTMENT OF PAY RATES

For adjustment of pay rates under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER No. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

§ 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ, without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a)—

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who—

(A) has successfully completed—

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in subsection (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized edu-

cation or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph—

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(g)(1) Except as provided in paragraph (3), employment of a registered nurse on a temporary part-time basis under subsection (a)(1) shall be for a probationary period of two years.

(2) Except as provided in paragraph (3), upon completion by a registered nurse of the probationary period described in paragraph (1)—

(A) the employment of such nurse shall—

- (i) no longer be considered temporary; and
- (ii) be considered an appointment described in section 7403(a) of this title; and

(B) the nurse shall be considered to have served the probationary period required by section 7403(b).

(3) This subsection shall not apply to appointments made on a term limited basis of less than or equal to three years of—

(A) nurses with a part-time appointment resulting from an academic affiliation or teaching position in a nursing academy of the Department;

(B) nurses appointed as a result of a specific research proposal or grant; or

(C) nurses who are not citizens of the United States and appointed under section 7407(a) of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-419, title II, § 204, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, § 301(c), Dec. 6, 2003, 117 Stat. 2057; Pub. L. 111-163, title VI, § 601(c), May 5, 2010, 124 Stat. 1168.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111-163 added subsec. (g).

2003—Subsec. (a)(1)(B), (C). Pub. L. 108-170, § 301(c)(1)(A), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

“(B) Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.

“(C) Dietitians, social workers, and librarians.”

Subsec. (a)(2)(B). Pub. L. 108-170, § 301(c)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

Subsec. (c)(1). Pub. L. 108-170, § 301(c)(2), substituted “paragraphs (1) and (3) of section 7401” for “section 7401(1)”.

2000—Subsec. (c)(2). Pub. L. 106-419, § 204(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, or who have successfully completed a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years.”

Subsec. (c)(3), (4). Pub. L. 106-419, § 204(b), added par. (3) and redesignated former par. (3) as (4).

1992—Subsecs. (a), (c)(1), (f)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

§ 7406. Residencies and internships

(a)(1) The Secretary may establish residencies and internships. The Secretary may appoint qualified persons to such positions without regard to civil service or classification laws, rules, or regulations.

(2) For the purposes of this section:

(A) The term “internship” includes the equivalency of an internship as determined in accordance with regulations which the Secretary shall prescribe.

(B) The term “intern” means a person serving an internship.

(b) The Secretary may prescribe the conditions of employment of persons appointed under this section, including necessary training, and the customary amount and terms of pay for such positions during the period of such employment and training. The amount and terms of such pay may be established retroactively based on changes in such customary amount and terms.

(c)(1) In order to carry out more efficiently the provisions of subsection (a)(1), the Secretary may contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with the Department in the training of interns or residents to provide, by the designation of one such institution to serve as a central administrative agency, for the central administration—

(A) of stipend payments;

(B) provision of fringe benefits; and

(C) maintenance of records for such interns and residents.

(2) The Secretary may pay to such designated agency, without regard to any other law or regulation governing the expenditure of Government moneys either in advance or in arrears, an amount to cover the cost for the period such intern or resident serves in a Department facility furnishing hospital care or medical services of—

(A) stipends fixed by the Secretary pursuant to paragraph (1);

(B) hospitalization, medical care, and life insurance and any other employee benefits as

are agreed upon by the participating institutions for the period that such intern or resident serves in a Department facility furnishing hospital care or medical services;

(C) tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1986, where applicable; and

(D) an amount to cover a pro rata share of the cost of expense of such central administrative agency.

(3)(A) Any amounts paid by the Secretary to such central administrative agency to cover the cost of hospitalization, medical care, or life insurance or other employee benefits shall be in lieu of any benefits of like nature to which such intern or resident may be entitled under the provisions of title 5, and the acceptance of stipends and employee benefits from the designated central administrative agency shall constitute a waiver by the recipient of any claim such recipient might have to any payment of stipends or employee benefits to which such recipient may be entitled under this title or title 5.

(B) Notwithstanding subparagraph (A), any period of service of any such intern or resident in a Department facility furnishing hospital care or medical services shall be deemed creditable service for the purposes of section 8332 of title 5.

(4) The agreement with such central administrative agency may further provide that the designated central administrative agency shall—

(A) make all appropriate deductions from the stipend of each intern and resident for local, State, and Federal taxes;

(B) maintain all records pertinent to such deductions and make proper deposits of such deductions; and

(C) maintain all records pertinent to the leave accrued by such intern and resident for the period during which such recipient serves in a participating facility, including a Department facility furnishing hospital care or medical services.

(5) Leave described in paragraph (4)(C) may be pooled, and the intern or resident may be afforded leave by the facility in which such person is serving at the time the leave is to be used to the extent of such person's total accumulated leave, whether or not earned at the facility in which such person is serving at the time the leave is to be afforded.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 227; amended Pub. L. 104-262, title III, § 345, Oct. 9, 1996, 110 Stat. 3208.)

REFERENCES IN TEXT

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C), is classified to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(b) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1996—Subsec. (c)(2), (3)(B). Pub. L. 104-262, § 345(1), substituted “Department facility furnishing hospital care or medical services” for “Department hospital” wherever appearing.

Subsec. (c)(4)(C). Pub. L. 104-262, § 345(2), substituted “participating facility” for “participating hospital”.

Pub. L. 104-262, § 345(1), substituted “Department facility furnishing hospital care or medical services” for “Department hospital”.

Subsec. (c)(5). Pub. L. 104-262, § 345(3), substituted “facility” for “hospital” in two places.

§ 7407. Administrative provisions for section 7405 and 7406 appointments

(a) When the Under Secretary for Health determines that it is not possible to recruit qualified citizens for the necessary services, appointments under sections 7405 and 7406 of this title may be made without regard to the citizenship requirements of section 7402(c) of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(b)(1) Subject to paragraph (2), the Under Secretary for Health may waive for the purpose of the appointment of an individual under section 7405 or 7406 of this title the requirements set forth in section 7402(b) of this title—

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) may be granted—

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(c) The program of training prescribed by the Secretary in order to qualify a person for the position of full-time physician assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Secretary may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(d) A person may not be appointed under section 7405 or 7406 of this title to an occupational category described in section 7401(1) of this title or in section 7406 of this title unless the person meets the requirements established in section 7402(d) of this title and regulations prescribed under that section.

(e) In accordance with the provisions of section 7425(b) of this title, the provisions of chapter 34 of title 5 pertaining to part-time career employment shall not apply to part-time appointments under sections 7405 and 7406 of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 228; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(c)-(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Subsecs. (a), (b)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

§ 7408. Appointment of additional employees

(a) There shall be appointed by the Secretary under civil service laws, rules, and regulations, such additional employees, other than those provided in section 7306 and paragraphs (1) and (3) of section 7401 of this title and those specified in sections 7405 and 7406 of this title, as may be necessary to carry out the provisions of this chapter.

(b) The Secretary, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Department, may appoint the individual to a position in the Administration providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 103-446, title XII, § 1201(e)(21), Nov. 2, 1994, 108 Stat. 4686.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4111 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted “civil service” for “civil-service”.

§ 7409. Contracts for scarce medical specialist services

(a) The Secretary may enter into contracts with institutions and persons described in subsection (b) to provide scarce medical specialist services at Department facilities. Such services may include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel.

(b) Institutions and persons with whom the Secretary may enter into contracts under subsection (a) are the following:

(1) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing.

(2) Clinics.

(3) Any other group or individual capable of furnishing such scarce medical specialist services.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 108-170, title III, § 302(f), Dec. 6, 2003, 117 Stat. 2058.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4117 of this title prior to the repeal of

that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-170 inserted “chiropractors,” after “optometrists,” in second sentence.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

§ 7410. Additional pay authorities

(a) IN GENERAL.—The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to the personnel described in paragraph (1) of section 7401 of this title, or interview expenses to candidates for appointment as such personnel, in the same manner, and subject to the same limitations, as in the case of the authority provided under sections 5524a, 5706b, 5753, and 5754 of title 5.

(b) SPECIAL INCENTIVE PAY FOR DEPARTMENT PHARMACIST EXECUTIVES.—(1) In order to recruit and retain highly qualified Department pharmacist executives, the Secretary may authorize the Under Secretary for Health to pay special incentive pay of not more than \$40,000 per year to an individual of the Veterans Health Administration who is a pharmacist executive.

(2) In determining whether and how much special pay to provide to such individual, the Under Secretary shall consider the following:

(A) The grade and step of the position of the individual.

(B) The scope and complexity of the position of the individual.

(C) The personal qualifications of the individual.

(D) The characteristics of the labor market concerned.

(E) Such other factors as the Secretary considers appropriate.

(3) Special incentive pay under paragraph (1) for an individual is in addition to all other pay (including basic pay) and allowances to which the individual is entitled.

(4) Except as provided in paragraph (5), special incentive pay under paragraph (1) for an individual shall be considered basic pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits.

(5) Special incentive pay under paragraph (1) for an individual shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

(6) Special incentive pay under paragraph (1) may not be awarded to an individual in an amount that would result in an aggregate amount of pay (including bonuses and awards) received by such individual in a year under this title that is greater than the annual pay of the President.

(Added Pub. L. 102-40, title I, § 103(a)[(1)], May 7, 1991, 105 Stat. 198; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 111-163, title VI, § 601(e), May 5, 2010, 124 Stat. 1169.)

AMENDMENTS

2010—Pub. L. 111-163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

§ 7411. Full-time board-certified physicians and dentists: reimbursement of continuing professional education expenses

The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401(1) of this title for expenses incurred, up to \$1,000 per year, for continuing professional education.

(Added Pub. L. 102-40, title I, §103(a)[(1)], May 7, 1991, 105 Stat. 199.)

EFFECTIVE DATE

Section 103(b) of Pub. L. 102-40 provided that: “Section 7411 of title 38, United States Code, as added by subsection (a), shall apply with respect to expenses incurred for continuing professional education that is pursued after September 30, 1991.”

SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

§ 7421. Personnel administration: in general

(a) Notwithstanding any law, Executive order, or regulation, the Secretary shall prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provision of this chapter in positions in the Veterans Health Administration listed in subsection (b).

(b) Subsection (a) refers to the following positions:

- (1) Physicians.
- (2) Dentists.
- (3) Podiatrists.
- (4) Optometrists.
- (5) Registered nurses.
- (6) Physician assistants.
- (7) Expanded-duty dental auxiliaries.
- (8) Chiropractors.

(Added Pub. L. 102-40, title II, §202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108-170, title III, §302(g), Dec. 6, 2003, 117 Stat. 2058.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2003—Subsec. (b)(8). Pub. L. 108-170 added par. (8).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

PRESERVATION OF EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS AND PENDING ACTIONS

Section 205 of Pub. L. 102-40 provided that:

“(a) EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS.—Any determination under chapter 71 of title 5, United States Code, of a collective bargaining unit within the Veterans Health Administration of the Department of Veterans Affairs, and any recognition

under that chapter of an employee labor organization as the exclusive bargaining representative for employees in a collective bargaining unit of the Department of Veterans Affairs, that is in effect on the date of the enactment of this Act [May 7, 1991] shall not be affected by the amendments made by this Act [see Tables for classification] and shall continue in effect in accordance with the terms of such determination or regulation.

“(b) PENDING CASES.—With respect to cases pending on the date of the enactment of this Act [May 7, 1991], or those cases which are brought before the establishment of either an administrative grievance procedure pursuant to section 7463 of title 38, United States Code (as added by the amendments made by this title), or a negotiated grievance procedure established under a collective bargaining agreement, such cases shall proceed in the same manner as they would have if this Act [see Tables for classification] had not been enacted.”

§ 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

(c) For purposes of this section, the term “professional conduct or competence” means any of the following:

- (1) Direct patient care.
- (2) Clinical competence.

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

(e) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 102-40, title II, §202, May 7, 1991, 105 Stat. 200.)

§ 7423. Personnel administration: full-time employees

(a) The hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pur-

suant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term "affiliated institution" means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

(Added and amended Pub. L. 102-40, title II, § 202, title IV, § 401(b)(3)(A), May 7, 1991, 105 Stat. 201, 230; Pub. L. 102-405, title II, § 203, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 104-262, title III, § 347, Oct. 9, 1996, 110 Stat. 3208.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a), (c), and (e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-262, §347(a), redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which read as follows: “Assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility, except in those cases where the person, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed 180 calendar days, which may be extended by the Under Secretary for Health for additional periods not to exceed 180 calendar days each.”

Subsec. (c). Pub. L. 104-262, §347(b), substituted “subsection (b)(5)” for “subsection (b)(6)” in introductory provisions.

1992—Subsec. (b)(1). Pub. L. 102-405, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

Subsec. (f). Pub. L. 102-405, §203, added subsec. (f).

1991—Subsec. (e). Pub. L. 102-40, §401(b)(3)(A), added subsec. (e).

ESTABLISHMENT OF LEAVE BANK PROGRAM

For provision authorizing the establishment of a leave bank program for health-care professional covered under subsec. (e) of former section 4108 of this title [now covered by subsec. (e) of this section] similar to the leave bank program for Federal civilian employees in reserves who were activated during Persian Gulf War, see section 361 of Pub. L. 102-25, set out as a Leave Bank for Federal Civilian Employees in Reserves Who Were Activated During Persian Gulf War note under section 6361 of Title 5, Government Organization and Employees.

§ 7424. Travel expenses of certain employees

(a) The Secretary may pay the expenses (other than membership fees) of persons described in sections 7306 and 7401(1) of this title (including persons in positions described in section 7401(1) of this title who are appointed on a temporary full-time basis or a part-time basis under section 7405 of this title) who are detailed by the Under Secretary for Health to attend meetings of associations for the promotion of medical and related science.

(b)(1) The Secretary may prescribe regulations establishing conditions under which officers and employees of the Administration who are nationally recognized principal investigators in medical research may be permitted to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel and such reasonable subsistence expenses as are approved by the Secretary pursuant to such regulations—

(A) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department; or

(B) in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the Department.

(2) Any such payment may be retained by such officers and employees to cover the cost of such

expenses or shall be deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

(Added Pub. L. 102-40, title IV, §401(b)(3)(B), May 7, 1991, 105 Stat. 230; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4108(d) and 4113 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

§ 7425. Employees: laws not applicable

(a) Physicians, dentists, nurses, and other health-care professionals employed by the Administration and appointed under section 7306, 7401(1), 7405, or 7406 of this chapter are not subject to the following provisions of law:

(1) Section 413 of the Civil Service Reform Act of 1978.

(2) Subchapter II of chapter 31 of title 5.

(3) Subchapter VIII of chapter 33 of title 5.

(4) Subchapter V of chapter 35 of title 5.

(5) Subchapter II of chapter 43 of title 5.

(6) Section 4507 of title 5.

(7) Subchapter VIII of chapter 53 of title 5.

(8) Subchapter V of chapter 75 of title 5.

(b) Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of section 7306 of this title or this chapter shall be considered to supersede, override, or otherwise modify such provision of that section or this chapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this chapter, or such provision to be superseded, overridden, or otherwise modified.

(Added Pub. L. 102-40, title IV, §401(b)(3)(B), May 7, 1991, 105 Stat. 231.)

REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (a)(1), is section 413 of Pub. L. 95-454, title IV, Oct. 13, 1978, 92 Stat. 1175, which is set out as a note under section 3133 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4101(e) and 4119 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

§ 7426. Retirement rights

(a) Except as provided in subsection (b), persons appointed to the Administration shall be subject to the provisions of and entitled to benefits under subchapter III of chapter 83 of title 5 or subchapter II of chapter 84 of title 5, whichever is applicable.

(b)(1) In computing the annuity under subchapter III of chapter 83, or subchapter II of chapter 84, of title 5 of an individual who retires

under such subchapter (other than under section 8337 or 8451 of such title) after December 31, 1981, and who served at any time on a less-than-full-time basis in a position in the Administration to which such individual was appointed under subchapter I—

(A) for the purpose of determining such individual's average pay, as defined by section 8331(4) or 8401(3) of title 5, whichever is applicable, the annual rate of basic pay for full-time service shall be deemed to be such individual's rate of basic pay; and

(B) the amount of such individual's annuity as computed under section 8339 or 8415 of title 5 (before application of any reduction required by subsection (i) of section 8339) shall be multiplied by the fraction equal to the ratio that that individual's total full-time equivalent service bears to that individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable.

(2) For the purposes of paragraph (1)(B), an individual's full-time equivalent service is the individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable, except that any period of service of such individual served on a less-than-full-time basis shall be prorated based on the fraction such service bears to full-time service. For the purposes of the preceding sentence, full-time service shall be considered to be 80 hours of service per biweekly pay period.

(3) A survivor annuity computed under section 8341, or subchapter IV of chapter 84, of title 5 based on the service of an individual described in paragraph (1) shall be computed based upon such individual's annuity as determined in accordance with such paragraph.

(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.

(Added Pub. L. 102-40, title IV, § 401(b)(3)(B), May 7, 1991, 105 Stat. 231; amended Pub. L. 102-585, title V, § 522, Nov. 4, 1992, 106 Stat. 4959; Pub. L. 106-398, § 1 [div. A], title X, § 1087(g)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A-294; Pub. L. 107-135, title I, § 132, Jan. 23, 2002, 115 Stat. 2454.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4107(i) and 4109 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-135 added subsec. (c).

2000—Subsec. (c). Pub. L. 106-398 struck out subsec. (c) which read as follows: "The Secretary may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions, and registered nurse positions, which otherwise cannot be readily met. The authority of the Secretary under the preceding sentence with respect to registered-nurse positions expires on December 31, 1994."

1992—Subsec. (c). Pub. L. 102-585 substituted "December 31, 1994" for "September 30, 1992".

SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

CODIFICATION

This subchapter was originally added by Pub. L. 102-40, May 7, 1991, 105 Stat. 187, and amended by Pub. L. 102-405, Oct. 9, 1992, 106 Stat. 1972; Pub. L. 104-262, Oct. 9, 1996, 110 Stat. 3177; Pub. L. 103-446, Nov. 2, 1994, 108 Stat. 4645; Pub. L. 106-419, Nov. 1, 2000, 114 Stat. 1822. This subchapter is shown here, however, as having been added by Pub. L. 108-445, § 3(b), Dec. 3, 2004, 118 Stat. 2636, without reference to those intervening amendments because of the general amendment of this subchapter by Pub. L. 108-445.

AMENDMENTS

2004—Pub. L. 108-445, § 3(b), Dec. 3, 2004, 118 Stat. 2636, substituted "PAY FOR PHYSICIANS AND DENTISTS" for "SPECIAL PAY FOR PHYSICIANS AND DENTISTS" in subchapter heading.

§ 7431. Pay

(a) ELEMENTS OF PAY.—Pay of physicians and dentists in the Veterans Health Administration shall consist of three elements as follows:

(1) Base pay as provided for under subsection (b).

(2) Market pay as provided for under subsection (c).

(3) Performance pay as provided under subsection (d).

(b) BASE PAY.—One element of pay for physicians and dentists shall be base pay. Base pay shall meet the following requirements:

(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

(3) The rate of base pay payable to a physician or dentist is based on the total number of the years of the service of the physician or dentist in the Veterans Health Administration as follows:

For a physician or dentist

with total service of:

	The rate of base pay is the rate payable for:
two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12

more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

(5) The non-foreign cost of living adjustment allowance authorized under section 5941 of title 5 for physicians and dentists whose pay is set under this section shall be determined as a percentage of base pay only.

(c) **MARKET PAY.**—One element of pay for physicians and dentists shall be market pay. Market pay shall meet the following requirements:

(1) Each physician and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician or dentist in a facility of the Department of Veterans Affairs.

(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis.

(4)(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable). The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.

(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.

(5) The determination of the amount of market pay of a physician or dentist shall take into account—

(A) the level of experience of the physician or dentist in the specialty or assignment of the physician or dentist;

(B) the need for the specialty or assignment of the physician or dentist at the medical facility of the Department concerned;

(C) the health care labor market for the specialty or assignment of the physician or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

(D) the board certifications, if any, of the physician or dentist;

(E) the prior experience, if any, of the physician or dentist as an employee of the Veterans Health Administration; and

(F) such other considerations as the Secretary considers appropriate.

(6) The amount of market pay of a physician or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

(7) No adjustment of the amount of market pay of a physician or dentist under paragraph (6) may result in a reduction of the amount of market pay of the physician or dentist while in the same position or assignment at the medical facility of the Department concerned, unless there is a change in board certification or reduction of privileges.

(d) **PERFORMANCE PAY.**—(1) One element of pay for physicians and dentists shall be performance pay.

(2) Performance pay shall be paid to a physician or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.

(3) The Secretary shall ensure that each physician and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician or dentist for performance pay.

(4) The amount of the performance pay payable to a physician or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician or dentist under paragraph (2).

(5) The amount of performance pay payable to a physician or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of—

(A) \$15,000; or

(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician or dentist in that fiscal year.

(6) A failure to meet goals or objectives applicable to a physician or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician or dentist.

(e) **REQUIREMENTS AND LIMITATIONS ON TOTAL PAY.**—(1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid

under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to dentists.

(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians or dentists (as the case may be) whose pay is set within that tier.

(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician or dentist under paragraph (1).

(3) The sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

(4) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(f) TREATMENT OF PAY.—Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(g) ANCILLARY EFFECTS OF DECREASES IN PAY.—(1) A decrease in pay of a physician or dentist resulting from an adjustment in the amount of market pay of the physician or dentist under subsection (c) shall not be treated as an adverse action.

(2) If the pay of a physician or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection with a disciplinary action taken against the physician or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

(h) DELEGATION OF RESPONSIBILITIES.—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

(Added Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2636; amended Pub. L. 111-163, title VI, §601(f), May 5, 2010, 124 Stat. 1170.)

PRIOR PROVISIONS

A prior section 7431, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 188; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984, related to authority of Secretary to provide for special pay, prior to the general amendment of this subchapter by Pub. L. 108-445.

AMENDMENTS

2010—Subsec. (b)(5). Pub. L. 111-163, §601(f)(1), added par. (5).

Subsec. (c)(4)(B)(i). Pub. L. 111-163, §601(f)(2), inserted at end “The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.”

Subsec. (c)(7). Pub. L. 111-163, §601(f)(3), substituted “concerned, unless there is a change in board certification or reduction of privileges.” for “concerned.”

EFFECTIVE DATE

Pub. L. 108-445, §3(d), Dec. 3, 2004, 118 Stat. 2641, provided that:

“(1) Notwithstanding the 60-day waiting requirement in section 7431(e)(1)(C) of title 38, United States Code (as amended by subsection (b)), pay provided for a physician or dentist under subchapter III of chapter 74 of such title, as amended by subsection (b), shall take effect on the first day of the first pay period applicable to such physician or dentist that begins on or after January 1, 2006.

“(2) Pay provided for the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, as amended by this section shall take effect on the first day of the first pay period applicable to the Under Secretary that begins on or after January 1, 2006.”

PILOT PROGRAM ON INCENTIVES FOR PHYSICIANS WHO ASSUME INPATIENT RESPONSIBILITIES AT COMMUNITY HOSPITALS IN HEALTH PROFESSIONAL SHORTAGE AREAS

Pub. L. 111-163, title III, §306, May 5, 2010, 124 Stat. 1152, provided that:

“(a) PILOT PROGRAM REQUIRED.—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility [sic] and advisability of each of the following:

“(1) The provision of financial incentives to eligible physicians who obtain and maintain inpatient privileges at community hospitals in health professional shortage areas in order to facilitate the provision by such physicians of primary care and mental health services to veterans at such hospitals.

“(2) The collection of payments from third-party providers for care provided by eligible physicians to nonveterans while discharging inpatient responsibilities at community hospitals in the course of exercising the privileges described in paragraph (1).

“(b) ELIGIBLE PHYSICIANS.—For purposes of this section, an eligible physician is a primary care or mental health physician employed by the Department of Veterans Affairs on a full-time basis.

“(c) DURATION OF PROGRAM.—The pilot program shall be carried out during the 3-year period beginning on the date of the commencement of the pilot program.

“(d) LOCATIONS.—

“(1) IN GENERAL.—The pilot program shall be carried out at not less than five community hospitals in each of not less than two Veterans Integrated Services Networks. The hospitals shall be selected by the Secretary using the results of the survey required under subsection (e).

“(2) QUALIFYING COMMUNITY HOSPITALS.—A community hospital may be selected by the Secretary as a location for the pilot program if—

“(A) the hospital is located in a health professional shortage area; and

“(B) the number of eligible physicians willing to assume inpatient responsibilities at the hospital (as determined using the result of the survey) is sufficient for purposes of the pilot program.

“(e) SURVEY OF PHYSICIAN INTEREST IN PARTICIPATION.—

“(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [May 5, 2010], the Secretary shall conduct a survey of eligible physicians to determine the extent of the interest of such physicians in participating in the pilot program.

“(2) ELEMENTS.—The survey shall disclose the type, amount, and nature of the financial incentives to be provided under subsection (h) to physicians participating in the pilot program.

“(f) PHYSICIAN PARTICIPATION.—

“(1) IN GENERAL.—The Secretary shall select physicians for participation in the pilot program from among eligible physicians who—

“(A) express interest in participating in the pilot program in the survey conducted under subsection (e);

“(B) are in good standing with the Department; and

“(C) primarily have clinical responsibilities with the Department.

“(2) VOLUNTARY PARTICIPATION.—Participation in the pilot program shall be voluntary. Nothing in this section shall be construed to require a physician working for the Department to assume inpatient responsibilities at a community hospital unless otherwise required as a term or condition of employment with the Department.

“(g) ASSUMPTION OF INPATIENT PHYSICIAN RESPONSIBILITIES.—

“(1) IN GENERAL.—Each eligible physician selected for participation in the pilot program shall assume and maintain inpatient responsibilities, including inpatient responsibilities with respect to nonveterans, at one or more community hospitals selected by the Secretary for participation in the pilot program under subsection (d).

“(2) COVERAGE UNDER FEDERAL TORT CLAIMS ACT.—If an eligible physician participating in the pilot program carries out on-call responsibilities at a community hospital where privileges to practice at such hospital are conditioned upon the provision of services to individuals who are not veterans while the physician is on call for such hospital, the provision of such services by the physician shall be considered an action within the scope of the physician's office or employment for purposes of chapter 171 of title 28, United States Code (commonly referred to as the ‘Federal Tort Claims Act’).

“(h) COMPENSATION.—

“(1) IN GENERAL.—The Secretary shall provide each eligible physician participating in the pilot program with such compensation (including pay and other appropriate compensation) as the Secretary considers appropriate to compensate such physician for the discharge of any inpatient responsibilities by such physician at a community hospital for which such physician would not otherwise be compensated by the Department as a full-time employee of the Department.

“(2) WRITTEN AGREEMENT.—The amount of any compensation to be provided a physician under the pilot program shall be specified in a written agreement entered into by the Secretary and the physician for purposes of the pilot program.

“(3) TREATMENT OF COMPENSATION.—The Secretary shall consult with the Director of the Office of Personnel Management on the inclusion of a provision in the written agreement required under paragraph (2) that describes the treatment under Federal law of any compensation provided a physician under the pilot program, including treatment for purposes of retirement under the civil service laws.

“(i) COLLECTIONS FROM THIRD PARTIES.—In carrying out the pilot program for the purpose described in sub-

section (a)(2), the Secretary shall implement a variety and range of requirements and mechanisms for the collection from third-party payors of amounts to reimburse the Department for health care services provided to nonveterans under the pilot program by eligible physicians discharging inpatient responsibilities under the pilot program.

“(j) REPORT.—Not later than 1 year after the date of the enactment of this Act [May 5, 2010] and annually thereafter, the Secretary shall submit to Congress a report on the pilot program, including the following:

“(1) The findings of the Secretary with respect to the pilot program.

“(2) The number of veterans and nonveterans provided inpatient care by physicians participating in the pilot program.

“(3) The amounts payable and collected under subsection (i).

“(k) DEFINITIONS.—In this section:

“(1) HEALTH PROFESSIONAL SHORTAGE AREA.—The term ‘health professional shortage area’ has the meaning given the term in section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

“(2) INPATIENT RESPONSIBILITIES.—The term ‘inpatient responsibilities’ means on-call responsibilities customarily required of a physician by a community hospital as a condition of granting privileges to the physician to practice in the hospital.”

TRANSITION PROVISIONS

Pub. L. 108-445, §3(e), Dec. 3, 2004, 118 Stat. 2641, provided that:

“(1) PHYSICIANS AND DENTISTS.—

“(A) PAY.—(i) The amount of the pay payable on and after the date of the enactment of this Act [Dec. 3, 2004] to a physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before such date shall continue to be determined under such section (as in effect on the day before such date) until the effective date that is applicable under subsection (d) [set out as a note above] to such physician or dentist, as the case may be.

“(ii) A physician or dentist appointed or reassigned on or after the date of the enactment of this Act, but before the effective date applicable under subsection (d) to such physician or dentist, shall be compensated in accordance with applicable provisions of section 7404 or 7405 of title 38, United States Code (as in effect on the day before date of the enactment of this Act), until such effective date.

“(B) SPECIAL PAY.—(i) A special pay agreement entered into by a physician or dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, a physician or dentist in receipt of special pay pursuant to such an agreement on that date shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to such physician or dentist.

“(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of the appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date applicable under subsection (d) to such physician or dentist. However, no special pay agreement shall be required for the payment of special pay under this clause.

“(C) TREATMENT OF SPECIAL PAY.—(i) Special pay paid under subparagraph (B) to a physician or dentist during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to such physician or dentist shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

“(ii) Special pay paid to a physician or dentist under section 7438 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

“(D) PRESERVATION OF PAY.—The amount of pay paid to a physician or dentist after the effective date of this Act shall not be less than the amount of pay paid to such physician or dentist on the day before the effective date of this Act while such physician or dentist remains in the same position or assignment.

“(2) UNDER SECRETARY FOR HEALTH.—

“(A) SPECIAL PAY.—(i) The current special pay agreement entered into by the Under Secretary for Health under subchapters I and III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act [Dec. 3, 2004] shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) [set out as a note above] to the Under Secretary.

“(ii) An individual appointed as Under Secretary for Health on or after the date of the enactment of this Act and before the effective date applicable under subsection (d) to the Under Secretary shall be paid special pay in accordance with the provisions of sections 7432(d)(2) and 7433 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on such effective date. However, no special pay agreement shall be required for the payment of special pay under this clause.

“(B) TREATMENT OF SPECIAL PAY.—Special pay paid under subparagraph (A) during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to the Under Secretary—

“(i) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act); and

“(ii) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.”

INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS

Pub. L. 108-445, §3(c), Dec. 3, 2004, 118 Stat. 2641, provided that: “The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

“Base Pay Step:	Rate of Pay:
1	\$90,000
2	\$93,000
3	\$96,000
4	\$99,000
5	\$102,000
6	\$105,000
7	\$108,000
8	\$111,000
9	\$114,000
10	\$117,000
11	\$120,000
12	\$123,000
13	\$126,000
14	\$129,000
15	\$132,000.”

§ 7432. Pay of Under Secretary for Health

(a) BASE PAY.—The base pay of the Under Secretary for Health shall be the annual rate of

basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

(b) MARKET PAY.—(1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

(c) TREATMENT OF PAY.—Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(Added Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2640.)

PRIOR PROVISIONS

A prior section 7432, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 189; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title III, §346, Oct. 9, 1996, 110 Stat. 3208, related to written agreements for special pay, prior to the general amendment of this subchapter by Pub. L. 108-445.

§ 7433. Administrative matters

(a) REGULATIONS.—(1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommendations for the purpose of this paragraph, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians and dentists of the Department and the views of representatives of professional organizations of physicians and dentists of the Department.

(b) REPORTS.—(1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 5 years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) Each report under this subsection shall include the following:

(A) A description of the rates of pay in effect during the current fiscal year with a comparison to the rates in effect during the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the aver-

age and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the current fiscal year and for the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

(Added Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2640.)

PRIOR PROVISIONS

Prior sections 7433 to 7440 were omitted in the general amendment of this subchapter by Pub. L. 108-445.

Section 7433, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 191; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(e)(22), Nov. 2, 1994, 108 Stat. 4686, related to special pay for full-time physicians.

Section 7434, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 192, related to special pay of part-time physicians.

Section 7435, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 193; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(e)(22), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 106-419, title II, §202(a)-(f), Nov. 1, 2000, 114 Stat. 1840, 1841, related to special pay of full-time dentists.

Section 7436, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 194, related to special pay of part-time dentists.

Section 7437, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 194; amended Pub. L. 102-405, title II, §204(a), title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984, related to general provisions concerning special pay of physicians and dentists.

Section 7438, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 196; amended Pub. L. 106-419, title II, §202(g), Nov. 1, 2000, 114 Stat. 1841, related to coordination of special pay with other benefits laws.

Section 7439, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 197, related to periodic review and quadrennial reports regarding pay of physicians and dentists.

Section 7440, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 198; amended Pub. L. 103-446, title XII, §1201(c)(6), Nov. 2, 1994, 108 Stat. 4684, related to annual reports of the use of authorities provided in this subchapter.

SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

§ 7451. Nurses and other health-care personnel: competitive pay

(a)(1) It is the purpose of this section to ensure, by a means providing increased responsibility and authority to directors of Department health-care facilities, that the rates of basic pay for health-care personnel positions described in paragraph (2) in each Department health-care facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for that facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-

care facilities in the same labor-market area in the recruitment and retention of qualified personnel for those positions.

(2) The health-care personnel positions referred to in paragraph (1) (hereinafter in this section referred to as "covered positions") are the following:

(A) Registered nurse.

(B) Such positions referred to in paragraphs (1) and (3) of section 7401 of this title (other than the positions of physician, dentist, and registered nurse) as the Secretary may determine upon the recommendation of the Under Secretary for Health.

(3)(A) Except as provided in subparagraph (B), the rates of basic pay for covered positions in the Department shall be established and adjusted in accordance with this section instead of subsection (b)(1) of section 7404 of this title or chapter 53 of title 5.

(B) Under such regulations as the Secretary shall prescribe, the Secretary shall establish and adjust the rates of basic pay for covered positions at the following health-care facilities in order to provide rates of basic pay that enable the Secretary to recruit and retain sufficient numbers of health-care personnel in such positions at those facilities:

(i) The Veterans Memorial Medical Center in the Republic of the Philippines.

(ii) Department of Veterans Affairs health-care facilities located outside the contiguous States, Alaska, and Hawaii.

(4) The Secretary, after receiving the recommendation of the Under Secretary for Health, shall prescribe regulations setting forth criteria and procedures to carry out this section and section 7452 of this title. Requirements in such regulations for directors to provide and maintain documentation of actions taken under this section shall require no more documentation than the minimum essential for responsible administration.

(b) The Secretary shall maintain the five grade levels for nurses employed by the Department under section 7401(1) of this title as specified in the Nurse Schedule in section 7404(b) of this title. The Secretary shall, pursuant to regulations prescribed to carry out this subchapter, establish grades for other covered positions as the Secretary considers appropriate.

(c)(1) For each grade in a covered position, there shall be a range of basic pay. The maximum rate of basic pay for a grade shall be 133 percent of the minimum rate of basic pay for the grade, except that, if the Secretary determines that a higher maximum rate is necessary with respect to any such grade in order to recruit and retain a sufficient number of high-quality health-care personnel, the Secretary may raise the maximum rate of basic pay for that grade to a rate not in excess of 175 percent of the minimum rate of basic pay for the grade. Whenever the Secretary exercises the authority under the preceding sentence to establish the maximum rate of basic pay at a rate in excess of 133 percent of the minimum rate for that grade, the Secretary shall, in the next annual report required by subsection (g),¹ provide justification

¹ See References in Text note below.

for doing so to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) The maximum rate of basic pay for any grade for a covered position may not exceed the maximum rate of basic pay established for positions in level IV of the Executive Schedule under section 5316¹ of title 5. The maximum rate of basic pay for a grade for the position of certified registered nurse anesthetist pursuant to an adjustment under subsection (d) may exceed the maximum rate otherwise provided in the preceding sentence.

(3) The range of basic pay for each such grade shall be divided into equal increments, known as "steps". The Secretary shall prescribe the number of steps. Each grade in a covered position shall have the same number of steps. Rates of pay within a grade may not be established at rates other than whole steps. Any increase (other than an adjustment under subsection (d)) within a grade in the rate of basic pay payable to an employee in a covered position shall be by one or more of such step increments.

(d)(1) Subject to subsection (e), the rates of basic pay for each grade in a covered position shall be adjusted periodically in accordance with this subsection in order to achieve the purposes of this section. Such adjustments shall be made—

(A) whenever there is an adjustment under section 5303 of title 5 in the rates of pay under the General Schedule, with the adjustment under this subsection to have the same effective date and to be by the same percentage as the adjustment in the rates of basic pay under the General Schedule; and

(B) at such additional times as the director of a Department health-care facility, with respect to employees in that grade at that facility, or the Under Secretary for Health, with respect to covered Regional and Central Office employees in that grade, determines.

(2) An adjustment in rates of basic pay under this subsection for a grade shall be carried out by adjusting the amount of the minimum rate of basic pay for that grade in accordance with paragraph (3) and then adjusting the other rates for that grade to conform to the requirements of subsection (c). Except as provided in paragraph (1)(A), such an adjustment in the minimum rate of basic pay for a grade shall be made by the director of a Department health-care facility so as to achieve consistency with the beginning rate of compensation for corresponding health-care professionals in the Bureau of Labor Statistics (BLS) labor-market area of that facility.

(3)(A) In the case of a Department health-care facility located in an area for which there is current information, based upon an industry-wage survey by the Bureau of Labor Statistics for that labor market, on compensation for corresponding health-care professionals for the BLS labor-market area of that facility, the director of the facility concerned shall use that information as the basis for making adjustments in rates of pay under this subsection. Whenever the Bureau of Labor Statistics releases the results of a new industry-wage survey for that labor market that includes information on compensation for corresponding health-care professionals,

the director of that facility shall determine, not later than 30 days after the results of the survey are released, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(B) In the case of a Department health-care facility located in an area for which the Bureau of Labor Statistics does not have current information on compensation for corresponding health-care professionals for the labor-market area of that facility for any covered position, the director of that facility shall conduct a survey in accordance with this subparagraph and shall adjust the amount of the minimum rate of basic pay for grades in that covered position at that facility based upon that survey. To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence. Any such survey shall be conducted in accordance with regulations prescribed by the Secretary. Those regulations shall be developed in consultation with the Secretary of Labor in order to ensure that the director of a facility collects information that is valid and reliable and is consistent with standards of the Bureau. The survey should be conducted using methodology comparable to that used by the Bureau in making industry-wage surveys except to the extent determined infeasible by the Secretary. To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section. Upon conducting a survey under this subparagraph, the director concerned shall determine, not later than 30 days after the date on which the collection of information through the survey is completed or published, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(C)(i) A director of a Department health-care facility may use data on the compensation paid to certified registered nurse anesthetists who are employed on a salary basis by entities that provide anesthesia services through certified registered nurse anesthetists in the labor-market area only if the director—

(I) has conducted a survey of compensation for certified registered nurse anesthetists in the local labor-market area of the facility under subparagraph (B);

(II) has used all available administrative authority with regard to collection of survey data; and

(III) makes a determination (under regulations prescribed by the Secretary) that such

survey methods are insufficient to permit the adjustments referred to in subparagraph (B) for such nurse anesthetists employed by the facility.

(ii) For the purposes of this subparagraph, certified registered nurse anesthetists who are so employed by such entities shall be deemed to be corresponding health-care professionals to the certified registered nurse anesthetists employed by the facility.

(D) The Under Secretary for Health shall prescribe regulations providing for the adjustment of the rates of basic pay for Regional and Central Office employees in covered positions in order to assure that those rates are sufficient and competitive.

(E) The director of a facility or Under Secretary for Health may not adjust rates of basic pay under this subsection for any pay grade so that the minimum rate of basic pay for that grade is greater than the beginning rates of compensation for corresponding positions at non-Department health-care facilities.

(F) The Under Secretary for Health shall provide appropriate education, training, and support to directors of Department health care facilities in the conduct and use of surveys, including the use of third-party surveys, under this paragraph.

(4) If the director of a Department health-care facility, or the Under Secretary for Health with respect to Regional and Central Office employees, determines, after any survey under paragraph (3)(B) that it is not necessary to adjust the rates of basic pay for employees in a grade of a covered position at that facility in order to carry out the purpose of this section, such an adjustment for employees at that facility in that grade shall not be made.

(5) Information collected by the Department in surveys conducted under this subsection is not subject to disclosure under section 552 of title 5.

(6) In this subsection—

(A) The term “beginning rate of compensation”, with respect to health-care personnel positions in non-Department health-care facilities corresponding to a grade of a covered position, means the sum of—

(i) the minimum rate of pay established for personnel in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care personnel employed in the same category of Department covered positions; and

(ii) other employee benefits for those positions to the extent that those benefits are reasonably quantifiable.

(B) The term “corresponding”, with respect to health-care personnel positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care personnel positions in Department health-care facilities.

(e)(1) An adjustment in a rate of basic pay under subsection (d) may not reduce the rate of basic pay applicable to any grade of a covered position.

(2) The director of a Department health-care facility, in determining whether to carry out a wage survey under subsection (d)(3) with respect to rates of basic pay for a grade of a covered position, may not consider as a factor in such determination the absence of a current recruitment or retention problem for personnel in that grade of that position. The director shall make such a determination based upon whether, in accordance with criteria established by the Secretary, there is a significant pay-related staffing problem at that facility in any grade for a position. If the director determines that there is such a problem, or that such a problem is likely to exist in the near future, the Director shall provide for a wage survey in accordance with subsection (d)(3).

(3) The Under Secretary for Health may, to the extent necessary to carry out the purposes of subsection (d), modify any determination made by the director of a Department health-care facility with respect to adjusting the rates of basic pay applicable to covered positions. If the determination of the director would result in an adjustment in rates of basic pay applicable to covered positions, any action by the Under Secretary under the preceding sentence shall be made before the effective date of such pay adjustment. Upon such action by the Under Secretary, any adjustment shall take effect on the first day of the first pay period beginning after such action. The Secretary shall ensure that the Under Secretary establishes a mechanism for the timely exercise of the authority in this paragraph.

(4) Each director of a Department health-care facility shall provide to the Secretary, not later than July 31 each year, a report on staffing for covered positions at that facility. The report shall include the following:

(A) Information on turnover rates and vacancy rates for each covered position, including a comparison of those rates with the rates for the preceding three years.

(B) The director's findings concerning the review and evaluation of the facility's staffing situation, including whether there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position and, if so, whether a wage survey was conducted, or will be conducted with respect to that position.

(C) In any case in which the director conducts such a wage survey during the period covered by the report, information describing the survey and any actions taken or not taken based on the survey, and the reasons for taking (or not taking) such actions.

(D) In any case in which the director conducts such a wage survey during the period covered by the report and makes adjustment in rates of basic pay applicable to one or more covered positions at the facility, information on the methodology used in making such adjustment or adjustments.

(E) In any case in which the director, after finding that there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position,

determines not to conduct a wage survey with respect to that position, a statement of the reasons why the director did not conduct such a survey.

(5) Not later than September 30 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on staffing for covered positions at Department health care facilities. Each such report shall include the following:

(A) A summary and analysis of the information contained in the most recent reports submitted by facility directors under paragraph (4).

(B) The information for each such facility specified in paragraph (4).

(6)(A) Upon the request of an individual described in subparagraph (B) for a report provided under paragraph (4) with respect to a Department health-care facility, the Under Secretary for Health or the director of such facility shall provide to the individual the most current report for such facility provided under such paragraph.

(B) An individual described in this subparagraph is—

(i) an individual in a covered position at a Department health-care facility; or

(ii) a representative of the labor organization representing that individual who is designated by that individual to make the request.

(f) For the purposes of this section, the term "health-care facility" means a medical center, an independent outpatient clinic, or an independent domiciliary facility.

(Added Pub. L. 101-366, title I, §102(b), Aug. 15, 1990, 104 Stat. 431, §4141; renumbered §7451 and amended Pub. L. 102-40, title III, §301(b), (c), title IV, §401(c)(1)(A), (2), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, §§301(b)-303, 304(b), 307, Nov. 4, 1992, 106 Stat. 4951-4953; Pub. L. 103-446, title XII, §1201(c)(7), (e)(23), Nov. 2, 1994, 108 Stat. 4684, 4686; Pub. L. 104-110, title I, §101(i), Feb. 13, 1996, 110 Stat. 768; Pub. L. 106-419, title II, §201(a), Nov. 1, 2000, 114 Stat. 1838; Pub. L. 107-135, title I, §133, Jan. 23, 2002, 115 Stat. 2454; Pub. L. 111-163, title V, §501(a), title VI, §601(g), (h), (j), May 5, 2010, 124 Stat. 1157, 1170.)

REFERENCES IN TEXT

Subsection (g), referred to in subsec. (c)(1), was repealed and subsec. (h), which did not relate to annual reports, was redesignated (g) by Pub. L. 106-419, title II, §201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

Level IV of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5315 of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (d)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111-163, §601(g), (h), substituted "level IV" for "level V" and inserted at end "The maximum rate of basic pay for a grade for the position of certified registered nurse anesthetist pursuant to an adjustment under subsection (d) may exceed the maximum rate otherwise provided in the preceding sentence."

Subsec. (d)(3)(F). Pub. L. 111-163, §601(j)(1), added subpar. (F).

Subsec. (e)(4)(D), (E). Pub. L. 111-163, §601(j)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(6). Pub. L. 111-163, §601(j)(3), added par. (6).

Subsecs. (f), (g). Pub. L. 111-163, §501(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding any pay adjustments under the authority of subsection (d) effective during the 12 months preceding the submission of the report. Each such report shall set forth, by health-care facility, the percentage of such increases and, in any case in which no increase was made, the basis for not providing an increase."

2002—Subsec. (d)(3)(A). Pub. L. 107-135, §133(1)(A), struck out "beginning rates of" before "compensation for corresponding health-care professionals" in two places.

Subsec. (d)(3)(B). Pub. L. 107-135, §133(1)(B), struck out "beginning rates of" before "compensation for corresponding health-care professionals".

Subsec. (d)(3)(C)(i). Pub. L. 107-135, §133(1)(C), struck out "beginning rates of" before "compensation" in introductory provisions and in subcl. (I).

Subsec. (d)(4). Pub. L. 107-135, §133(2), struck out "or at any other time that an adjustment in rates of pay is scheduled to take place under this subsection" after "paragraph (3)(B)" and "Whenever a director makes such a determination, the director shall within 10 days notify the Under Secretary for Health of the decision and the reasons for the decision." at end.

Subsec. (e)(4). Pub. L. 107-135, §133(3), struck out "grade in a" before "covered position" in subpar. (A), struck out "grade of a" before "covered position" and substituted "that position" for "that grade" in subpar. (B), and struck out "grade of a" before "covered position" in subpar. (D).

2000—Subsec. (d)(1). Pub. L. 106-419, §201(a)(1)(A)(i), substituted "Subject to subsection (e), the rates" for "The rates" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 106-419, §201(a)(1)(A)(ii), substituted "section 5303" for "section 5305" and inserted "and to be by the same percentage" after "to have the same effective date".

Subsec. (d)(2). Pub. L. 106-419, §201(a)(1)(B), substituted "Except as provided in paragraph (1)(A), such" for "Such" in second sentence.

Subsec. (d)(3)(B). Pub. L. 106-419, §201(a)(1)(C), inserted after first sentence "To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence.", inserted before penultimate sentence "To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section.", and in penultimate sentence inserted "or published" after "survey is completed".

Subsec. (d)(3)(C)(iii). Pub. L. 106-419, §201(a)(1)(D), struck out cl. (iii) which read as follows: "The authority of the director to use such additional data under this subparagraph with respect to certified registered nurse anesthetists expires on January 1, 1998."

Subsec. (e). Pub. L. 106-419, §201(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Adjustments in rates of basic pay under subsection (d) may increase or reduce the rates of basic pay applicable to any grade of a covered position. In the case of such an adjustment that reduces the rates of pay for a grade, an employee serving at a Department health-care facility on the day before the effective date of that adjustment in a position affected by the adjustment may not (by reason of that adjustment) incur a reduction in the rate of basic pay applicable to that employee so long as the employee continues to

serve in that covered position at that facility. If such an employee is subsequently promoted to a higher grade, or advanced to a higher step within the employee's grade, for which the rate of pay as so adjusted is lower than the employee's rate of basic pay on the day before the effective date of the promotion, the employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to the employee before the promotion so long as the employee continues to serve in that covered position at that facility."

Subsec. (f). Pub. L. 106-419, § 201(a)(3), substituted "March 1 of each year" for "February 1 of 1991, 1992, and 1993" and "subsection (d)" for "subsection (d)(1)(A)".

Subsecs. (g), (h). Pub. L. 106-419, § 201(a)(4), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed that not later than Dec. 1 of 1991, 1992, and 1993, the Secretary was to submit to Congress a report regarding the exercise of authorities provided in this section for the preceding fiscal year and listed items to be included in report.

1996—Subsec. (d)(3)(C)(iii). Pub. L. 104-110 substituted "January 1, 1998" for "April 1, 1995".

1994—Subsec. (d)(3)(C)(i)(I). Pub. L. 103-446, § 1201(e)(23), substituted "labor-market area" for "labor market area".

Subsec. (g)(1). Pub. L. 103-446, § 1201(c)(7), substituted "Under Secretary for Health's actions" for "Chief Medical Director's actions".

1992—Subsec. (a)(2)(B). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (a)(3). Pub. L. 102-585, § 302, designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), the rates" for "The rates", and added subpar. (B).

Subsec. (a)(4). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (b). Pub. L. 102-585, § 301(b), substituted "five" for "four".

Subsec. (d)(1)(B). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(C). Pub. L. 102-585, § 303(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(D). Pub. L. 102-585, § 303(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(E). Pub. L. 102-585, § 303(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

Subsec. (g)(9). Pub. L. 102-585, § 304(b), added par. (9).

Subsec. (g)(10). Pub. L. 102-585, § 307, added par. (10).

1991—Pub. L. 102-40, § 401(c)(1)(A), renumbered section 4141 of this title as this section.

Subsec. (a)(2)(B). Pub. L. 102-40, § 401(c)(2)(A)(i), substituted "paragraphs (1) and (3) of section 7401" for "clauses (1) and (3) of section 4104".

Subsec. (a)(3). Pub. L. 102-40, § 301(c), 401(c)(2)(A)(ii), substituted "7404" for "4107" and inserted before period at end "or chapter 53 of title 5".

Subsec. (a)(4). Pub. L. 102-40, § 401(c)(2)(A)(iii), substituted "7452" for "4142".

Subsec. (b). Pub. L. 102-40, § 401(c)(2)(B), substituted "7401(1)" for "4104(1)" and "7404(b)" for "4107(b)".

Subsec. (d)(1)(B). Pub. L. 102-40, § 301(b)(1), inserted "or the Chief Medical Director, with respect to covered Regional and Central Office employees in that grade," before "determines".

Subsec. (d)(3)(C). Pub. L. 102-40, § 301(b)(2)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(3)(D). Pub. L. 102-40, § 301(b)(2)(A), redesignated subpar. (C) as (D) and inserted "or Chief Medical Director" after "facility".

Subsec. (d)(4). Pub. L. 102-40, § 301(b)(3), inserted "or the Chief Medical Director with respect to Regional and Central Office employees," after "facility".

Subsec. (g)(8). Pub. L. 102-40, § 401(c)(2)(C), substituted "7452(b)(2)" for "4142(b)(2)".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 301(b) to 303 and 304(b) of Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

EFFECTIVE DATE

Section 104 of Pub. L. 101-366, as amended by Pub. L. 102-40, title III, § 301(e), May 7, 1991, 105 Stat. 208, provided that:

"(a) IN GENERAL.—(1) Except as provided in subsection (b), section 101 [amending former section 4107 of this title and enacting provisions set out as a note under former section 4107 of this title] and the amendments made by section 102 [enacting this section and section 4142 [now 7452] of this title and amending former sections 4104 and 4107 of this title] shall take effect on the date of enactment [Aug. 15, 1990].

"(2) The amendment made by section 103 [amending former section 4107 of this title] shall take effect on the first day of the first pay period beginning after April 1, 1991.

"(b) NEW PAY RATES.—The rates of basic pay established pursuant to section 4141 [now 7451] of title 38, United States Code, as added by section 102, shall take effect for covered positions (as defined in that section) with respect to the first pay period beginning on or after April 1, 1991."

SAVINGS PROVISION

Section 301(a) of Pub. L. 102-40 provided that: "Physician assistants and expanded-function dental auxiliaries shall continue to be paid after August 14, 1990, according to the Nurse Schedule in section 4107(b) of title 38 [former section 4107(b) of this title], United States Code, as in effect on August 14, 1990, until the effective date of a determination by the Secretary to convert those occupations to 'covered positions' and pay them pursuant to section 7451 of such title, as redesignated by section 401(c)."

PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Pub. L. 108-422, title V, § 501, Nov. 30, 2004, 118 Stat. 2395, provided that:

"(a) PILOT PROGRAM.—(1) Not later than 90 days after the date of the enactment of this Act [Nov. 30, 2004], the Secretary of Veterans Affairs shall designate a health care service region, or a section within such a region, in which health care facilities of the Department of Veterans Affairs are adversely affected by a shortage of qualified nurses.

"(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human capital tools and techniques in the recruitment of qualified nurses for positions at Department health care facilities in such region or section and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private sector entity for services under the pilot program for recruitment of qualified nurses.

"(b) PRIVATE SECTOR RECRUITMENT PRACTICES.—For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include—

"(1) employer branding and interactive advertising strategies;

"(2) Internet technologies and automated staffing systems; and

“(3) the use of recruitment, advertising, and communication agencies.

“(c) STREAMLINED HIRING PROCESS.—In carrying out the pilot program under this section, the Secretary shall, at health care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline and automate the hiring process that can only be implemented if authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measures to be implemented.

“(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health care facilities.”

REPORT ON REQUESTS FOR WAIVERS OF PAY REDUCTIONS FOR REEMPLOYED ANNUITANTS TO FILL NURSE POSITIONS

Pub. L. 107-135, title I, §103, Jan. 23, 2002, 115 Stat. 2450, required the Secretary of Veterans Affairs to submit to Congress not later than March 28 of 2002 and 2003 a report on requests, made during the fiscal year preceding such report, for waivers of pay reductions for reemployed annuitants to fill nurse positions.

NATIONAL COMMISSION ON VA NURSING

Pub. L. 107-135, title I, subtitle D (§§141-146), Jan. 23, 2002, 115 Stat. 2454, established in the Department of Veterans Affairs the “National Commission on VA Nursing”, directed the Commission, not later than two years after its first meeting, to report to Congress on legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel by the Department and the future of the nursing profession within the Department, and provided for the termination of the Commission 90 days after the date of the submission of its report.

REPORT ON NURSE LOCALITY PAY

Pub. L. 105-368, title IX, §905, Nov. 11, 1998, 112 Stat. 3361, provided that:

“(a) REPORT REQUIRED.—(1) Not later than February 1, 1999, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report assessing the system of locality-based pay for nurses established under the Department of Veterans Affairs Nurse Pay Act of 1990 (Public Law 101-366) and now set forth in section 7451 of title 38, United States Code.

“(2) The Secretary shall submit with the report under paragraph (1) a copy of the report on the locality pay system prepared by the contractor pursuant to a contract with Systems Flow, Inc., that was entered into on May 22, 1998.

“(b) MATTERS TO BE INCLUDED.—The report of the Secretary under subsection (a)(1) shall include the following:

“(1) An assessment of the effects of the locality-based pay system, including information, shown by facility and grade level, regarding the frequency and percentage increases, if any, in the rate of basic pay under that system of nurses employed in the Veterans Health Administration.

“(2) An assessment of the manner in which that system is being applied.

“(3) Plans and recommendations of the Secretary for administrative and legislative improvements or revisions to the locality pay system.

“(4) An explanation of the reasons for any decision not to adopt any recommendation in the report referred to in subsection (a)(2).

“(c) UPDATED REPORT.—Not later than February 1, 2000, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report updating the report submitted under subsection (a)(1).”

RATIFICATION OF ACTIONS DURING PERIOD OF EXPIRED AUTHORITY

Any action taken by Secretary of Veterans Affairs before Feb. 13, 1996, under provision of law amended by title I of Pub. L. 104-110 that was taken during period beginning on date on which authority of Secretary under such provision of law expired and ending on Feb. 13, 1996, considered to have same force and effect as if such amendment had been in effect at time of that action, see section 103 of Pub. L. 104-110, set out as a note under section 1710 of this title.

NURSING PERSONNEL QUALIFICATION STANDARDS

Section 305 of Pub. L. 102-585 provided that:

“(a) REVISION.—The Secretary of Veterans Affairs shall conduct a review of the qualification standards used for nursing personnel at Department health-care facilities and the relationship between those standards and the compression of nursing personnel in the existing intermediate and senior grades. Based upon that review, the Secretary shall revise those qualification standards—

“(1) to reflect the five grade levels for nursing personnel under the Nurse Schedule [see 38 U.S.C. 7404(b)(1)], as amended by section 301; and

“(2) to reduce the compression of nursing personnel in the existing intermediate and senior grades.

“(b) DEADLINE FOR PRESCRIBING STANDARDS.—The Secretary shall prescribe revised qualification standards for nursing personnel pursuant to subsection (a) not later than six months after the date of the enactment of this Act [Nov. 4, 1992].

“(c) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's findings and actions under this section. The report shall be submitted not later than six months after the date on which revised qualification standards for nursing personnel are prescribed pursuant to subsection (b).”

REPORT ON PAY FOR CHIEF NURSE POSITION

Section 306 of Pub. L. 102-585 provided that:

“(a) REVIEW.—The Secretary of Veterans Affairs shall conduct a review of—

“(1) the process for determining the rate of basic pay applicable to the Chief Nurse position at Department of Veterans Affairs health-care facilities; and

“(2) the relationship between the rate of such basic pay and the rate of basic pay applicable to nurses in positions subordinate to the Chief Nurse at the respective Department facilities.

The review shall include an assessment of the adequacy of that process in determining an equitable pay rate for the Chief Nurse position, including an assessment of the accuracy of data collected in the survey process and the difficulties in obtaining accurate data.

“(b) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the review and assessment conducted under subsection (a). To the extent that the review discloses difficulties in obtaining accurate data in the survey process with respect to the Chief Nurse position at Department facilities, the Secretary shall include in the report recommendations for corrective action. The Secretary shall also include in the report (1) a listing of the salary differential (expressed as a percentage) between the Chief Nurse at a facility and the highest paid nurse (excluding certified registered nurse anesthetists) serving in a position subordinate to the Chief Nurse, and (2) an analysis of such data. The report shall be submitted not later than 12 months after the date of the enactment of this Act [Nov. 4, 1992].”

§ 7452. Nurses and other health-care personnel: administration of pay

(a)(1) Regulations prescribed under section 7451(a) of this title shall provide that whenever an employee in a covered position is given a new duty assignment which is a promotion, the rate of basic pay of that employee shall be increased at least one step increment in that employee's grade.

(2) A nurse serving in a head nurse position shall while so serving receive basic pay at a rate two step increments above the rate that would otherwise be applicable to the nurse. If such a nurse is in the highest or next-to-highest step for that nurse's grade, the preceding sentence shall be applied by extrapolation to create additional steps only for the purposes of this paragraph. The limitation in section 7451(c)(1) of this title shall not apply with respect to increased basic pay under this paragraph.

(3) An employee in a covered position who is promoted to the next higher grade shall be paid in that grade at a step having a rate of basic pay that is greater than the rate of basic pay applicable to the employee in a covered position on the day before the effective date of the promotion.

(b)(1) Under regulations which the Secretary prescribes for the administration of this section, the director of a Department health-care facility (A) shall pay a cash bonus (in an amount to be determined by the director not to exceed \$2,000) to an employee in a covered position at that facility who becomes certified in a specialty recognized by the Department, and (B) may provide such a bonus to an employee in such a position who has demonstrated both exemplary job performance and exemplary job achievement. The authority of the Secretary under this subsection is in addition to any other authority of the Secretary to provide job performance incentives.

(2) The Secretary shall include in the annual report under section 7451(g)¹ of this title a discussion of the use during the period covered by the report of the payment of bonuses under this subsection and other job performance incentives available to the Secretary.

(c)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a Department health-care facility, in making a new appointment of a person under section 7401(1) of this title as an employee in a covered position for employment at that facility, may make that appointment at a rate of pay described in paragraph (3) without being subject to a requirement for prior approval at any higher level of authority within the Department in any case in which the director determines that it is necessary to do so in order to obtain the services of employees in covered positions in cases in which vacancies exist at that health-care facility.

(2) Such a determination may be made by the director of a health-care facility only in order to recruit employees in covered positions with specialized skills, especially employees with skills which are especially difficult or demanding.

(3) A rate of pay referred to in paragraph (1) is a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade).

(4) Whenever the director of a health-care facility makes an appointment described in paragraph (1) without prior approval at a higher level of authority within the Department, the director shall—

(A) state in a document the reasons for employing the employee in a covered position at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the employee is appointed (and retain that document on file); and

(B) in the first budget documents submitted to the Secretary by the director after the employee is employed, include documentation for the need for such increased rates of basic pay described in clause (A).

(5) Whenever the director of a health-care facility makes an appointment described in paragraph (1) on the basis of a determination described in paragraph (2), the covered employee appointed may continue to receive pay at a rate higher than that which would otherwise be applicable to that employee only so long as the employee continues to serve in a position requiring the specialized skills with respect to which the determination was made.

(d) Whenever the director of a health-care facility makes an appointment described in subsection (c)(1), the director may (without a regard to any requirement for prior approval at any higher level of authority within the Department) increase the rate of pay of other employees in the same covered position at that facility who are in the grade in which the appointment is made and are serving in a position requiring the specialized skills with respect to which the determination under subsection (c)(2) concerning the appointment was made. Any such increase shall continue in effect with respect to any employee only so long as the employee continues to serve in such a position.

(e) An employee in a covered position employed under section 7401(1) of this title who (without a break in employment) transfers from one Department health-care facility to another may not be reduced in grade or step within grade (except pursuant to a disciplinary action otherwise authorized by law) if the duties of the position to which the employee transfers are similar to the duties of the position from which the employee transferred. The rate of basic pay of such employee shall be established at the new health-care facility in a manner consistent with the practices at that facility for an employee of that grade and step, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Sec-

¹ See References in Text note below.

retary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g)¹ of this title, provide justification for doing so.

(f) In this section, the term “covered position” has the meaning given that term in section 7451 of this title.

(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

- (A) Each Department health care facility.
- (B) The Central Office.

(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than \$10,000 or more than \$100,000.

(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care facility concerned, and such other factors as the Secretary considers appropriate.

(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

(Added Pub. L. 101-366, title I, §102(b), Aug. 15, 1990, 104 Stat. 435, §4142; renumbered §7452 and amended Pub. L. 102-40, title III, §301(d), title IV, §401(c)(1)(A), (3), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-585, title III, §304(a), Nov. 4, 1992, 106 Stat. 4952; Pub. L. 108-445, §5, Dec. 3, 2004, 118 Stat. 2645; Pub. L. 111-163, title VI, §601(i), May 5, 2010, 124 Stat. 1170.)

REFERENCES IN TEXT

Section 7451(g) of this title, referred to in subsecs. (b)(2) and (e), was repealed and subsec. (h) of section 7451 was redesignated (g) by Pub. L. 106-419, title II, §201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

AMENDMENTS

2010—Subsec. (g)(2). Pub. L. 111-163 substituted “\$100,000” for “\$25,000”.

2004—Subsec. (g). Pub. L. 108-445 added subsec. (g).

1992—Subsec. (e). Pub. L. 102-585 inserted before period at end “, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay

of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g) of this title, provide justification for doing so”.

1991—Pub. L. 102-40, §401(c)(1)(A), renumbered section 4142 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, §401(c)(3)(A)(i), substituted “7451(a)” for “4141(a)”.

Subsec. (a)(2). Pub. L. 102-40, §401(c)(3)(A)(ii), substituted “7451(c)(1)” for “4141(c)(1)”.

Subsec. (a)(3). Pub. L. 102-40, §301(d), substituted “paid” for “appointed”.

Subsec. (b)(2). Pub. L. 102-40, §401(c)(3)(B), substituted “7451(g)” for “4141(g)”.

Subsec. (c)(1). Pub. L. 102-40, §401(c)(3)(C), substituted “7401(1)” for “4104(1)”.

Subsec. (e). Pub. L. 102-40, §401(c)(3)(C), substituted “7401(1)” for “4104(1)”.

Subsec. (f). Pub. L. 102-40, §401(c)(3)(D), substituted “7451” for “4141”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

§ 7453. Nurses: additional pay

(a) In addition to the rate of basic pay provided for nurses, a full-time nurse or part-time nurse shall receive additional pay as provided by this section.

(b) A nurse performing service, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of such service at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such service fall between 6 postmeridian and 6 antemeridian. When less than four hours of such service fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(c) A nurse performing service, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of such service at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(d) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(e)(1) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight consecutive hours, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay.

(2) For the purposes of this subsection, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay.

(3) Compensatory time off in lieu of pay for service performed under the provisions of this subsection shall not be permitted, except as vol-

untarily requested in writing by the nurse in question.

(4) Any excess service performed under this subsection on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration.

(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's period of service; or

(B) such travel—

(i) involves the performance of services while traveling,

(ii) is incident to travel that involves the performance of services while traveling,

(iii) is carried out under arduous conditions as determined by the Secretary, or

(iv) results from an event which could not be scheduled or controlled administratively.

(f) For the purpose of computing the additional pay provided by subsection (b), (c), (d), or (e), a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by 2,080.

(g) When a nurse is entitled to two or more forms of additional pay under subsection (b), (c), (d), or (e) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in subsection (e) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under subsection (d) for such service.

(h) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for excess service as provided in subsection (e).

(i) Any additional pay paid pursuant to this section shall not be considered as basic pay for the purposes of the following provisions of title 5 (and any other provision of law relating to benefits based on basic pay):

(1) Subchapter VI of chapter 55.

(2) Section 5595.

(3) Chapters 81, 83, 84, and 87.

(j)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary may increase the rates of additional pay authorized under subsections (b) through (h) if the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses.

(2) An increase under paragraph (1) in rates of additional pay—

(A) may be made at any specific Department health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category

of nurses at non-Federal health-care facilities in the same geographic area as such Department health-care facility (based upon a reasonably representative sampling of such non-Federal facilities); and

(B) may be made on a nationwide, local, or other geographic basis if the Secretary finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 232; amended Pub. L. 103-446, title XII, § 1201(e)(24), (g)(6), Nov. 2, 1994, 108 Stat. 4686, 4687; Pub. L. 111-163, title VI, § 601(k)(1), May 5, 2010, 124 Stat. 1171.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-163, § 601(k)(1)(A), substituted “a full-time nurse or part-time nurse” for “a nurse”.

Subsec. (b). Pub. L. 111-163, § 601(k)(1)(B), struck out “on a tour of duty” after “performing service” and substituted “hour of such service” for “hour of service on such tour”, “at least four hours of such service” for “at least four hours of such tour”, and “less than four hours of such service” for “less than four hours of such tour”.

Subsec. (c). Pub. L. 111-163, § 601(k)(1)(C), struck out “on a tour of duty” after “performing service” and substituted “such service” for “service on such tour”.

Subsec. (e)(1). Pub. L. 111-163, § 601(k)(1)(D)(i), substituted “eight consecutive hours” for “eight hours in a day”.

Subsec. (e)(5)(A). Pub. L. 111-163, § 601(k)(1)(D)(ii), substituted “period of service” for “tour of duty”.

1994—Subsecs. (f), (g). Pub. L. 103-446, § 1201(e)(24), substituted “subsection (b), (c), (d), or (e)” for “subsections (b), (c), (d), or (e)”.

Subsec. (i)(3). Pub. L. 103-446, § 1201(g)(6), struck out “of title 5” before period at end.

§ 7454. Physician assistants and other health care professionals: additional pay

(a) Physician assistants and expanded-function dental auxiliaries shall be entitled to additional pay on the same basis as provided for nurses in section 7453 of this title.

(b)(1) When the Secretary determines it to be necessary in order to obtain or retain the services of individuals in positions listed in section 7401(3) of this title, the Secretary may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in section 7453 of this title.

(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(3) Employees appointed under section 7408 of this title performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay in addition to the rate of basic pay provided such employees

for each hour of service on such tour at a rate equal to 25 percent of such employee's hourly rate of basic pay.

(c) The Secretary shall prescribe by regulation standards for compensation and payment under this section.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 107-135, title I, § 121(a), Jan. 23, 2002, 115 Stat. 2450; Pub. L. 108-170, title III, §§ 301(d), 303(a), Dec. 6, 2003, 117 Stat. 2057, 2058; Pub. L. 111-163, title VI, § 601(k)(2), May 5, 2010, 124 Stat. 1171.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(f) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111-163 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title."

2003—Subsec. (b)(1). Pub. L. 108-170, § 301(d), substituted "individuals in positions listed in section 7401(3) of this title," for "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, or occupational therapists,".

Subsec. (b)(3). Pub. L. 108-170, § 303(a), added par. (3).
2002—Subsec. (b). Pub. L. 107-135 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title III, § 303(b), Dec. 6, 2003, 117 Stat. 2058, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to the first pay period beginning on or after January 1, 2004."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, § 121(b), Jan. 23, 2002, 115 Stat. 2450, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [Jan. 23, 2002]."

§ 7455. Increases in rates of basic pay

(a)(1) Subject to subsections (b), (c), and (d), when the Secretary determines it to be necessary in order to obtain or retain the services of persons described in paragraph (2), the Secretary may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay—

(A) may be made on a nationwide basis, local basis, or other geographic basis; and

(B) may be made—

(i) for one or more of the grades listed in the schedules in subsection (b)(1) of section 7404 of this title;

(ii) for one or more of the health personnel fields within such grades; or

(iii) for one or more of the grades of the General Schedule under section 5332 of title 5.

(2) Paragraph (1) applies to the following:

(A) Individuals employed in positions listed in paragraphs (1) and (3) of section 7401 of this title.

(B) Health-care personnel who—

(i) are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans.

(C) Employees who are Department police officers providing services under section 902 of this title.

(b) Increases in rates of basic pay may be made under subsection (a) only in order—

(1) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

(2) to achieve adequate staffing at particular facilities; or

(3) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(c)(1) Subject to paragraph (2), the amount of any increase under subsection (a) in the minimum rate for any grade may not (except in the case of nurse anesthetists, licensed practical nurses, licensed vocational nurses, nursing positions otherwise covered by title 5, pharmacists, and licensed physical therapists) exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 of title 5 or similar provision of law) for the grade or level by more than 30 percent.

(2) No rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule.

(d)(1) In the exercise of the authority provided in subsection (a) with respect to personnel described in subparagraph (B) or (C) of paragraph (2) of that subsection to increase the rates of basic pay for any category of personnel not appointed under subchapter I, the Secretary shall, not less than 45 days before the effective date of a proposed increase, notify the President of the Secretary's intention to provide such an increase.

(2) Such a proposed increase shall not take effect if, before the effective date of the proposed increase, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval.

(3) If, before that effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 102-83, § 2(c)(7), Aug. 6, 1991, 105 Stat. 402; Pub. L. 102-405, title II, § 201, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 106-419, title II, § 203, Nov. 1, 2000, 114 Stat. 1841; Pub. L. 111-163, title VI, § 601(l), May 5, 2010, 124 Stat. 1172.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-163 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c)(1) The amount of any increase under subsection (a) in the maximum rate for any grade may not (except in the case of nurse anesthetists, pharmacists, and licensed physical therapists) exceed by two times the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Under Secretary for Health.

“(2) Whenever the amount of an increase under subsection (a) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.”

2000—Subsec. (c)(1). Pub. L. 106-419 inserted “, pharmacists,” after “anesthetists”.

1992—Subsec. (c). Pub. L. 102-405, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in par. (1).

Pub. L. 102-405, §201, designated existing provisions as par. (1), inserted “by two times” after first reference to “exceed”, and added par. (2).

1991—Subsec. (a)(2)(C). Pub. L. 102-83 substituted “902” for “218”.

EX. ORD. NO. 12797. REVIEW OF INCREASES IN RATES OF BASIC PAY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AND OTHER AGENCIES

Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7455(d)(2)–(3) of title 38, United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Department of Veterans Affairs and of other agencies, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by section 7455(d)(2)–(3) of title 38, United States Code, to review and approve or disapprove the increases in rates of basic pay proposed by the Secretary of Veterans Affairs and to provide the appropriate committees of the Congress with a written statement of the reasons for any such disapproval.

SEC. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Secretary of Veterans Affairs are in the best interest of the Federal Government, do not exceed the amounts authorized by section 7455, and are made only to:

- (1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;
- (2) Achieve adequate staffing at particular facilities; or
- (3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

SEC. 3. The Secretary of Veterans Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this order.

SEC. 4. The Director of the Office of Personnel Management shall provide the Secretary of Veterans Affairs with a copy of any written statement provided to the appropriate committees of the Congress that sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this order.

SEC. 5. In the case of any other law authorizing another agency to use the authority provided by section 7455 of title 38, United States Code, the Director of the Office of Personnel Management shall exercise the same authority in the same manner as provided for with respect to section 7455 under sections 1 through 4 of this order, and the head of such other agency shall provide information requested by the Director as provided for in section 3 of this order.

SEC. 6. Executive Order No. 12438 of August 23, 1983, is revoked.

SEC. 7. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

§ 7456. Nurses: special rules for weekend duty

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two 12-hour tours of duty is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly sched-

uled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) The Secretary shall prescribe regulations for the implementation of this section.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 235; amended Pub. L. 111-163, title VI, § 602(b), May 5, 2010, 124 Stat. 1173.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(h) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsecs. (c), (d). Pub. L. 111-163 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “A nurse described in subsection (b)(1) who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.”

§ 7456A. Nurses: alternate work schedules

(a) **APPLICABILITY.**—This section applies to registered nurses appointed under this chapter.

(b) **72/80 WORK SCHEDULE.**—(1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.

(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 80-hour pay period shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who—

(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

(iv) performs a period of service in excess of 40 hours during an administrative work week.

(D) The Secretary may provide a nurse to whom this subsection applies with additional

pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

(c) **HOLIDAY PAY.**—A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

(d) **9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.**—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year.

(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

(e) **NOTIFICATION OF MODIFICATION OF BENEFITS.**—The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule.

(f) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 108-445, § 4(a)(1), Dec. 3, 2004, 118 Stat. 2643; amended Pub. L. 111-163, title VI, § 602(c), May 5, 2010, 124 Stat. 1173.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-163, § 602(c)(2)(A), substituted “72/80” for “36/40” in heading.

Subsec. (b)(1)(A). Pub. L. 111-163, § 602(c)(1), substituted “six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.” for “three regularly scheduled 12-hour tours of duty within a work week shall be considered for all purposes to have worked a full 40-hour basic work week.”

Subsec. (b)(2)(A). Pub. L. 111-163, § 602(c)(2)(B), substituted “80-hour pay period” for “40-hour basic work week”.

Subsec. (b)(3). Pub. L. 111-163, § 602(c)(2)(C), struck out “regularly” before “scheduled 12-hour tour”.

§ 7457. On-call pay

(a) The Secretary may pay an employee to whom this section applies pay at the rate provided in section 7453(h) of this title except for such time as the employee may be called back to work.

(b) This section applies to an employee who meets each of the following criteria:

(1) The employee is employed in a position listed in paragraph (3) of section 7401 of this title or meets the criteria specified in clauses (i), (ii), and (iii) of section 7455(a)(2)(B) of this title.

(2) The employee is employed in a work unit for which on-call premium pay is authorized.

(3) The employee is officially scheduled to be on call outside such employee's regular hours or on a holiday designated by Federal statute or Executive order.

(c) An employee who is eligible for on-call pay under subsection (a) and who was receiving standby premium pay pursuant to section 5545 of title 5 on May 20, 1988, shall, as long as such employee is employed in the same position and work unit and remains eligible for such standby pay, receive pay for any period of on-call duty at the rate equal to the greater of—

(1) the rate of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or

(2) the rate of pay which such employee is entitled to receive including on-call premium pay described in subsection (a).

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 236.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(j) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

§ 7458. Recruitment and retention bonus pay

(a)(1) In order to recruit and retain registered nurses, the Secretary may enter into agreements under this section. Such an agreement may be entered into with any registered nurse who is employed at, or who agrees to accept employment with the Department at, a Department health-care facility that is designated by the Secretary as a health-care facility with a significant shortage in registered nurses in any clinical service.

(2) A registered nurse entering into an agreement under this section shall agree to remain employed by the Department as a registered nurse for a period of time to be specified in the agreement and to serve during that period in a specific health-care facility that is designated by the Secretary as a health-care facility with a significant shortage of registered nurses in that nurse's clinical service. Such period may not be less than two years or more than four years. Such employment during such period may be on a full-time basis or a part-time basis, as specified in the agreement. Part-time employment as specified in such an agreement may not be less than half-time.

(b)(1) The Secretary shall pay to any nurse entering into an agreement under this section bonus pay in an amount specified in the agreement. The amount of such bonus pay may not exceed—

(A) \$2,000 per year, in the case of an agreement for two years,

(B) \$3,000 per year, in the case of an agreement for three years, and

(C) \$4,000 per year, in the case of an agreement for four years.

(2) In the case of an agreement for employment on less than a full-time basis, the amount of bonus pay shall be pro-rated accordingly.

(c)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(2)(A) The Secretary may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commences under the agreement.

(B) If the Secretary makes a lump-sum payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(d)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which the individual is entitled.

(2) The amount of a bonus paid under this section shall not be considered to be basic pay for the purposes of sections 5551, 5552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

(e) At least once each year the Secretary, upon the recommendation of the Under Secretary for Health, shall determine the specific health-care facilities and clinical services, if any, as to which there are significant problems with respect to the recruitment and retention of registered nurses. Upon making any such determination, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and the House of Representatives of the determination and the basis for the determination.

(f) The Secretary may enter into agreements under this section with individuals in a health profession other than nursing (and other than a health profession for which special pay may be provided under subchapter III) if the Secretary determines that there are significant problems with respect to recruitment and retention of employees in that health profession. The Secretary's authority to enter into any such agreement under this section, and such agreement, shall be subject to the provisions of this section in the same manner as are the authority to enter into an agreement under this section with a registered nurse and such an agreement.

(g)(1) Except as provided in paragraph (2) of this subsection, an individual who voluntarily, or because of misconduct, fails to perform services as assigned by the Secretary for the period of obligated service provided in an agreement under this section shall refund to the United States the amount by which the total amount of bonus payments received by that individual under this section exceeds the amount that such individual would have received under an agreement under this section to serve for the period of obligated service actually served (as deter-

mined at the time the agreement is entered into). If the period actually served is less than two years, the amount to be refunded is the entire amount paid to the individual.

(2) An individual shall not be required to make a refund under paragraph (1) of this subsection if the Secretary determines, in accordance with regulations prescribed under subsection (h) of this section, that the individual's failure to perform services for the period of obligated service is due to circumstances (not including separation for cause) beyond the control of the individual.

(3) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(4) The provisions of this subsection and the specific amounts that the individual could be required to refund shall be disclosed to the individual at the time the agreement is entered into and shall be clearly set forth in the contract.

(h) The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 100-322, title II, §212(a)(1), May 20, 1988, 102 Stat. 514, §4120; renumbered §7458 and amended Pub. L. 102-40, title IV, §401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(h)(4), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 110-387, title IX, §901(a)(6), Oct. 10, 2008, 122 Stat. 4142.)

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110-387 substituted “pro-rated” for “pro rated”.

1994—Pub. L. 103-446 substituted “Recruitment and retention bonus pay” for “Recruitment and retention bonus pay for nurses and certain other health-care personnel” as section catchline.

1992—Subsec. (e). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40 renumbered section 4120 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Subsecs. (b)(1), (c)(2), (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places and “Secretary’s” for “Administrator’s”.

Pub. L. 102-40 substituted “subchapter III” for “section 4118 of this title”.

Subsecs. (g)(1), (2), (h). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

§ 7459. Nursing staff: special rules for overtime duty

(a) LIMITATION.—Except as provided in subsection (c), the Secretary may not require nursing staff to work more than 40 hours (or 24 hours if such staff is covered under section 7456 of this title) in an administrative work week or more than eight consecutive hours (or 12 hours if such staff is covered under section 7456 or 7456A of this title).

(b) VOLUNTARY OVERTIME.—(1) Nursing staff may on a voluntary basis elect to work hours otherwise prohibited by subsection (a).

(2) The refusal of nursing staff to work hours prohibited by subsection (a) shall not be grounds—

(A) to discriminate (within the meaning of section 704(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-3(a))) against the staff;

(B) to dismiss or discharge the staff; or

(C) for any other adverse personnel action against the staff.

(c) OVERTIME UNDER EMERGENCY CIRCUMSTANCES.—(1) Subject to paragraph (2), the Secretary may require nursing staff to work hours otherwise prohibited by subsection (a) if—

(A) the work is a consequence of an emergency that could not have been reasonably anticipated;

(B) the emergency is non-recurring and is not caused by or aggravated by the inattention of the Secretary or lack of reasonable contingency planning by the Secretary;

(C) the Secretary has exhausted all good faith, reasonable attempts to obtain voluntary workers;

(D) the nurse staff have critical skills and expertise that are required for the work; and

(E) the work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

(2) Nursing staff may not be required to work hours under this subsection after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.

(d) NURSING STAFF DEFINED.—In this section, the term “nursing staff” includes the following:

(1) A registered nurse.

(2) A licensed practical or vocational nurse.

(3) A nurse assistant appointed under this chapter or title 5.

(4) Any other nurse position designated by the Secretary for purposes of this section.

(Added Pub. L. 111-163, title VI, §602(a)(1), May 5, 2010, 124 Stat. 1172.)

SUBCHAPTER V—DISCIPLINARY AND GRIEVANCE PROCEDURES

§ 7461. Adverse actions: section 7401(1) employees

(a) Whenever the Under Secretary for Health (or an official designated by the Under Secretary for Health) brings charges based on conduct or performance against a section 7401(1) employee and as a result of those charges an adverse personnel action is taken against the employee, the employee shall have the right to appeal the action.

(b)(1) If the case involves or includes a question of professional conduct or competence in which a major adverse action was taken, such an appeal shall be made to a Disciplinary Appeals Board under section 7462 of this title.

(2) In any other case, such an appeal shall be made—

(A) through Department grievance procedures under section 7463 of this title, in any case that involves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any

case of an employee who is not covered by a collective bargaining agreement under chapter 71 of title 5; or

(B) through grievance procedures provided through collective bargaining under chapter 71 of title 5 or through Department grievance procedures under section 7463 of this title, as the employee elects, in the case of an employee covered by a collective bargaining agreement under chapter 71 of title 5 that does not involve or include a question of professional conduct or competence.

(c) For purposes of this subchapter—

(1) Section 7401(1) employees are employees of the Department employed on a full-time basis under a permanent appointment in a position listed in section 7401(1) of this title (other than interns and residents appointed pursuant to section 7406 of this title).

(2) A major adverse action is an adverse action which includes any of the following:

- (A) Suspension.
- (B) Transfer.
- (C) Reduction in grade.
- (D) Reduction in basic pay.
- (E) Discharge.

(3) A question of professional conduct or competence is a question involving any of the following:

- (A) Direct patient care.
- (B) Clinical competence.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

(e) Whenever the Secretary proposes to prescribe regulations under this subchapter, the Secretary shall publish the proposed regulations in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 202; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

REGULATIONS

Section 204 of Pub. L. 102-40 provided that: “The Secretary of Veterans Affairs shall prescribe regulations under subchapter V of chapter 74 of title 38, United States Code (as added by section 203), not later than 180 days after the date of the enactment of this Act [May 7, 1991]. Such regulations shall be published in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.”

§ 7462. Major adverse actions involving professional conduct or competence

(a)(1) Disciplinary Appeals Boards appointed under section 7464 of this title shall have exclusive jurisdiction to review any case—

(A) which arises out of (or which includes) a question of professional conduct or competence of a section 7401(1) employee; and

(B) in which a major adverse action was taken.

(2) The board shall include in its record of decision in any mixed case a statement of the board's exclusive jurisdiction under this subsection and the basis for such exclusive jurisdiction.

(3) For purposes of paragraph (2), a mixed case is a case that includes both a major adverse action arising out of a question of professional conduct or competence and an adverse action which is not a major adverse action or which does not arise out of a question of professional conduct or competence.

(b)(1) In any case in which charges are brought against a section 7401(1) employee which arises out of, or includes, a question of professional conduct or competence which could result in a major adverse action, the employee is entitled to the following:

(A) At least 30 days advance written notice from the Under Secretary for Health or other charging official specifically stating the basis for each charge, the adverse actions that could be taken if the charges are sustained, and a statement of any specific law, regulation, policy, procedure, practice, or other specific instruction that has been violated with respect to each charge, except that the requirement for notification in advance may be waived if there is reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned.

(B) A reasonable time, but not less than seven days, to present an answer orally and in writing to the Under Secretary for Health or other deciding official, who shall be an official higher in rank than the charging official, and to submit affidavits and other documentary evidence in support of the answer.

(2) In any case described in paragraph (1), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(3)(A) If a proposed adverse action covered by this section is not withdrawn, the deciding official shall render a decision in writing within 21 days of receipt by the deciding official of the employee's answer. The decision shall include a statement of the specific reasons for the decision with respect to each charge. If a major adverse action is imposed, the decision shall state whether any of the charges sustained arose out of a question of professional conduct or competence. If any of the charges are sustained, the notice of the decision to the employee shall include notice of the employee's rights of appeal.

(B) Notwithstanding the 21-day period specified in subparagraph (A), a proposed adverse action may be held in abeyance if the employee requests, and the deciding official agrees, that the employee shall seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973. Any such abeyance of a proposed action may not extend for more than one year.

(4)(A) The Secretary may require that any answer and submission under paragraph (1)(B) be

submitted so as to be received within 30 days of the date of the written notice of the charges, except that the Secretary shall allow the granting of extensions for good cause shown.

(B) The Secretary shall require that any appeal to a Disciplinary Appeals Board from a decision to impose a major adverse action shall be received within 30 days after the date of service of the written decision on the employee.

(c)(1) When a Disciplinary Appeals Board convenes to consider an appeal in a case under this section, the board, before proceeding to consider the merits of the appeal, shall determine whether the case is properly before it.

(2) Upon hearing such an appeal, the board shall, with respect to each charge appealed to the board, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part. If the deciding official is sustained (in whole or in part) with respect to any such charge, the board shall—

(A) approve the action as imposed;

(B) approve the action with modification, reduction, or exception; or

(C) reverse the action.

(3) A board shall afford an employee appealing an adverse action under this section an opportunity for an oral hearing. If such a hearing is held, the board shall provide the employee with a transcript of the hearing.

(4) The board shall render a decision in any case within 45 days of completion of the hearing, if there is a hearing, and in any event no later than 120 days after the appeal commenced.

(d)(1) After resolving any question as to whether a matter involves professional conduct or competence, the Secretary shall cause to be executed the decision of the Disciplinary Appeals Board in a timely manner and in any event in not more than 90 days after the decision of the Board is received by the Secretary. Pursuant to the board's decision, the Secretary may order reinstatement, award back pay, and provide such other remedies as the board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(2) If the Secretary finds a decision of the board to be clearly contrary to the evidence or unlawful, the Secretary may—

(A) reverse the decision of the board, or

(B) vacate the decision of the board and remand the matter to the Board for further consideration.

(3) If the Secretary finds the decision of the board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(4) The Secretary's execution of a board's decision shall be the final administrative action in the case.

(e) The Secretary may designate an employee of the Department to represent management in any case before a Disciplinary Appeals Board.

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3)(B), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in subpars. (A) and (B).

§ 7463. Other adverse actions

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either—

(1) is not a major adverse action; or

(2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title.

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled to—

(A) an advance written notice stating the specific reason for the proposed action, and

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

(1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.

(2) A right to a prompt report of the findings and recommendations by the impartial examiner.

(3) A right to a prompt review of the examiner's findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner's recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 205.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

§ 7464. Disciplinary Appeals Boards

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information

to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 206.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

SUBCHAPTER VI—REGIONAL MEDICAL EDUCATION CENTERS

§ 7471. Designation of Regional Medical Education Centers

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as "Center") designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

(1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.

(2) Advanced clinical instruction.

(3) The opportunity for conducting clinical investigations.

(4) Clinical demonstrations in the use of new types of health personnel and in the better use of the skills of existing health personnel.

(5) Routine verification of basic medical skills and, where determined necessary, remediation of any deficiency in such skills.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4121 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

§ 7472. Supervision and staffing of Centers

(a) Centers shall be operated under the supervision of the Under Secretary for Health and shall be staffed with personnel qualified to provide the highest quality instruction and training in various medical and health care disciplines.

(b) As a means of providing appropriate recognition to persons in the career service of the Administration who possess outstanding qualifications in a particular medical or health care discipline, the Under Secretary for Health shall from time to time and for such period as the Under Secretary for Health considers appropriate assign such persons to serve as visiting instructors at Centers.

(c) Whenever the Under Secretary for Health considers it necessary for the effective conduct of the program provided for under this subchapter, the Under Secretary for Health may contract for the services of highly qualified medical and health personnel from outside the Department to serve as instructors at such Centers.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4122 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” wherever appearing.

§ 7473. Personnel eligible for training

(a) The Under Secretary for Health shall determine the manner in which personnel are to be selected for training in the Centers. Preference shall be given to career personnel of the Administration.

(b) To the extent that facilities are available medical and health personnel from outside the Administration may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of

personnel of the Administration provided under sharing arrangements entered into by the Under Secretary for Health and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be credited to the applicable Department medical appropriation account.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4123 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in subsecs. (a) and (b).

§ 7474. Consultation

The Under Secretary for Health shall carry out this subchapter after consultation with the special medical advisory group established pursuant to section 7312(a) of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(5), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4124 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

CHAPTER 75—VISUAL IMPAIRMENT AND ORIENTATION AND MOBILITY PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAM

Sec.

- | | |
|-------|---|
| 7501. | Establishment of scholarship program; purpose. |
| 7502. | Application and acceptance. |
| 7503. | Amount of assistance; duration. |
| 7504. | Agreement. |
| 7505. | Repayment for failure to satisfy requirements of agreement. |

PRIOR PROVISIONS

A prior chapter 75 which consisted of sections 4201 to 4210 was renumbered chapter 78 of this title and transferred to follow chapter 76 of this title, and sections 4201 to 4210 were renumbered sections 7801 to 7810 of this title, respectively.

§ 7501. Establishment of scholarship program; purpose

(a) ESTABLISHMENT.—Subject to the availability of appropriations, the Secretary shall establish and carry out a scholarship program to provide financial assistance in accordance with this chapter to individuals who—

- (1) are accepted for enrollment or currently enrolled in a program of study leading to a degree or certificate in visual impairment or ori-

entation and mobility, or a dual degree or certification in both such areas, at an accredited (as determined by the Secretary) educational institution that is in a State; and

(2) enter into an agreement with the Secretary as described in section 7504 of this title.

(b) **PURPOSE.**—The purpose of the scholarship program is to increase the supply of qualified blind rehabilitation specialists for the Department and the Nation.

(c) **OUTREACH.**—The Secretary shall publicize the scholarship program to educational institutions throughout the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to Historically Black Colleges and Universities.

(Added Pub. L. 111-163, title III, §302(a), May 5, 2010, 124 Stat. 1146.)

IMPLEMENTATION

Pub. L. 111-163, title III, §302(c), May 5, 2010, 124 Stat. 1149, provided that: "The Secretary of Veterans Affairs shall implement chapter 75 of title 38, United States Code, as added by subsection (a), not later than 6 months after the date of the enactment of this Act [May 5, 2010]."

§ 7502. Application and acceptance

(a) **APPLICATION.**—(1) To apply and participate in the scholarship program under this chapter, an individual shall submit to the Secretary an application for such participation together with an agreement described in section 7504 of this title under which the participant agrees to serve a period of obligated service in the Department as provided in the agreement in return for payment of educational assistance as provided in the agreement.

(2) In distributing application forms and agreement forms to individuals desiring to participate in the scholarship program, the Secretary shall include with such forms the following:

(A) A fair summary of the rights and liabilities of an individual whose application is approved (and whose agreement is accepted) by the Secretary.

(B) A full description of the terms and conditions that apply to participation in the scholarship program and service in the Department.

(b) **APPROVAL.**—(1) Upon the Secretary's approval of an individual's participation in the scholarship program, the Secretary shall, in writing, promptly notify the individual of that acceptance.

(2) An individual becomes a participant in the scholarship program upon such approval by the Secretary.

(Added Pub. L. 111-163, title III, §302(a), May 5, 2010, 124 Stat. 1147.)

§ 7503. Amount of assistance; duration

(a) **AMOUNT OF ASSISTANCE.**—The amount of the financial assistance provided an individual under the scholarship program under this chapter shall be the amount determined by the Secretary as being necessary to pay the tuition and fees of the individual. In the case of an individ-

ual enrolled in a program of study leading to a dual degree or certification in both the areas of study described in section 7501(a)(1) of this title, the tuition and fees shall not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree or certification.

(b) **RELATIONSHIP TO OTHER ASSISTANCE.**—Financial assistance may be provided to an individual under the scholarship program to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

(c) **MAXIMUM AMOUNT OF ASSISTANCE.**—(1) The total amount of assistance provided under the scholarship program for an academic year to an individual who is a full-time student may not exceed \$15,000.

(2) In the case of an individual who is a part-time student, the total amount of assistance provided under the scholarship program shall bear the same ratio to the amount that would be paid under paragraph (1) if the participant were a full-time student in the program of study being pursued by the individual as the coursework carried by the individual to full-time coursework in that program of study.

(3) The total amount of assistance provided to an individual under the scholarship program may not exceed \$45,000.

(d) **MAXIMUM DURATION OF ASSISTANCE.**—Financial assistance may not be provided to an individual under the scholarship program for more than six academic years.

(Added Pub. L. 111-163, title III, §302(a), May 5, 2010, 124 Stat. 1147.)

§ 7504. Agreement

An agreement between the Secretary and a participant in the scholarship program under this chapter shall be in writing, shall be signed by the participant, and shall include—

(1) the Secretary's agreement to provide the participant with financial assistance as authorized under this chapter;

(2) the participant's agreement—

(A) to accept such financial assistance;

(B) to maintain enrollment and attendance in the program of study described in section 7501(a)(1) of this title;

(C) while enrolled in such program, to maintain an acceptable level of academic standing (as determined by the educational institution offering such program under regulations prescribed by the Secretary); and

(D) after completion of the program, to serve as a full-time employee in the Department for a period of three years, to be served within the first six years after the participant has completed such program and received a degree or certificate described in section 7501(a)(1) of this title; and

(3) any other terms and conditions that the Secretary considers appropriate for carrying out this chapter.

(Added Pub. L. 111-163, title III, §302(a), May 5, 2010, 124 Stat. 1148.)

§ 7505. Repayment for failure to satisfy requirements of agreement

(a) IN GENERAL.—An individual who receives educational assistance under the scholarship program under this chapter shall repay to the Secretary an amount equal to the unearned portion of such assistance if the individual fails to satisfy the requirements of the agreement entered into under section 7504 of this title, except in circumstances authorized by the Secretary.

(b) AMOUNT OF REPAYMENT.—The Secretary shall establish, by regulations, procedures for determining the amount of the repayment required under this section and the circumstances under which an exception to the required repayment may be granted.

(c) WAIVER OR SUSPENSION OF COMPLIANCE.—The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of an individual for service or payment under this chapter (or an agreement under this chapter) whenever—

(1) noncompliance by the individual is due to circumstances beyond the control of the individual; or

(2) the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

(d) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to repay the Secretary under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after the date of the termination of the agreement or contract on which the debt is based.

(Added Pub. L. 111-163, title III, §302(a), May 5, 2010, 124 Stat. 1148.)

CHAPTER 76—HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAM**SUBCHAPTER I—GENERAL**

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7601.	Establishment of program; purpose.
7602.	Eligibility.
7603.	Application and acceptance.
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SUBCHAPTER II—SCHOLARSHIP PROGRAM

7611.	Authority for program.
7612.	Eligibility; application; agreement.
7613.	Scholarship.
7614.	Part-time students.
7615.	Status of participants.
7616.	Obligated service.
7617.	Breach of agreement: liability.
7618.	Additional program requirements.
7619.	Expiration of program.

SUBCHAPTER III—TUITION REIMBURSEMENT PROGRAM

7621.	Authority for program.
7622.	Eligibility; application; agreement.
7623.	Obligated service.
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7625.	Allocation and distribution of funding.

SUBCHAPTER IV—ADMINISTRATIVE MATTERS

7631.	Periodic adjustments in amount of assistance.
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7633.	Regulations.
7634.	Breach of agreement; waiver of liability.
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SUBCHAPTER V—STIPEND PROGRAM FOR MEMBERS OF THE SELECTED RESERVE

7651.	Authority for program.
7652.	Eligibility: individuals entitled to benefits under the GI Bill program for members of the Selected Reserve.
7653.	Amount of assistance.
7654.	Obligated service.
7655.	Breach of agreement; liability.

SUBCHAPTER VI—EMPLOYEE INCENTIVE SCHOLARSHIP PROGRAM

7671.	Authority for program.
7672.	Eligibility; agreement.
7673.	Scholarship.
7674.	Obligated service.
7675.	Breach of agreement: liability.
[7676.]	Repealed.]

SUBCHAPTER VII—EDUCATION DEBT REDUCTION PROGRAM

7681.	Authority for program.
7682.	Eligibility.
7683.	Education debt reduction.
[7684.]	Repealed.]

AMENDMENTS

2010—Pub. L. 111-163, title VI, §603(d), May 5, 2010, 124 Stat. 1174, added items 7618 and 7619 and struck out former item 7618 “Expiration of program”.

2002—Pub. L. 107-135, title I, §§101(a)(2), 102(a)(2), Jan. 23, 2002, 115 Stat. 2447, 2448, struck out items 7676 “Expiration of program” and 7684 “Expiration of program”.

1998—Pub. L. 105-368, title VIII, §§802(b), 803(b), Nov. 11, 1998, 112 Stat. 3356, 3358, added headings for subchapters VI and VII and items 7671 to 7676 and 7681 to 7684.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4301 to 4355 as 7601 to 7655, respectively.

1990—Pub. L. 101-366, title II, §205(a)(2), Aug. 15, 1990, 104 Stat. 440, added heading for subchapter V and items 4351 to 4355.

SUBCHAPTER I—GENERAL**§ 7601. Establishment of program; purpose**

(a) There is hereby established a program to be known as the Department of Veterans Affairs Health Professionals Educational Assistance Program (hereinafter in this chapter referred to as the “Educational Assistance Program”). The program consists of—

(1) the scholarship program provided for in subchapter II of this chapter;

(2) the tuition reimbursement program provided for in subchapter III of this chapter;

(3) the Selected Reserve member stipend program provided for under subchapter V of this chapter;

(4) the employee incentive scholarship program provided for in subchapter VI of this chapter; and

(5) the education debt reduction program provided for in subchapter VII of this chapter.

(b) The purpose of the Educational Assistance Program is to assist in providing an adequate supply of trained health-care personnel for the Department and the Nation.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 518, §4301; amended Pub. L. 101-366, title II, §205(c)(1), Aug. 15, 1990, 104 Stat. 441; renumbered §7601, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(2)(B)(vi), (3), (4), Aug. 6, 1991, 105 Stat. 403, 404; Pub. L. 103-446, title XII, §1201(e)(25), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 105-368, title VIII, §805(1), Nov. 11, 1998, 112 Stat. 3358.)

AMENDMENTS

1998—Subsec. (a)(4), (5). Pub. L. 105-368 added pars. (4) and (5).

1994—Subsec. (a)(1). Pub. L. 103-446 substituted semicolon for comma at end.

1991—Pub. L. 102-40 renumbered section 4301 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(2)(B)(vi), substituted "Department of Veterans Affairs" for "Veterans' Administration" in introductory provisions.

Subsec. (b). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1990—Subsec. (a)(3). Pub. L. 101-366 added par. (3).

PAYMENTS TO HEALTH-CARE PROFESSIONAL EMPLOYEES FOR TUITION LOANS

Pub. L. 102-585, title V, §523(b), Nov. 4, 1992, 106 Stat. 4959, provided that Secretary of Veterans Affairs could not provide payments to health-care professional employees of Department of Veterans Affairs for payment of tuition loans, prior to repeal by Pub. L. 105-368, title VIII, §804, Nov. 11, 1998, 112 Stat. 3358.

TUITION LOAN PAYMENT PROGRAM

Pub. L. 102-389, title I, Oct. 6, 1992, 106 Stat. 1574, provided in part for an appropriation: "For payment of outstanding tuition loans to Department of Veterans Affairs health care professional employees (excluding physicians and dentists) who agree to remain in service for one year or more, \$5,000,000, to remain available until September 30, 1994: *Provided*, That the Secretary, in order to recruit and retain such employees, may make such payments, not to exceed \$3,000 during any calendar year, or \$12,000 in total, to any such employee who has an outstanding tuition loan from an educational institution approved by the Secretary that has led to a degree in the health care occupation in which such individual is employed: *Provided further*, That no payment shall be made in advance: *Provided further*, That regulations shall be promulgated by the Secretary to implement this program."

§ 7602. Eligibility

(a)(1) To be eligible to participate in the Educational Assistance Program under subchapter II, III, or VI of this chapter, an individual must be accepted for enrollment or be currently enrolled as a student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads toward completion of a degree in a field of education or training for which a scholarship may be awarded under subchapter II of this chapter, for which tuition reimbursement may be provided under subchapter III of this chapter, or for which a scholarship may be awarded under subchapter VI of this chapter, as the case may be.

(2) A qualifying educational institution for purposes of this section is an educational institution that is in a State and that (as determined by the Secretary) is an accredited institution.

(b) An individual is not eligible to apply to participate in the Educational Assistance Program under subchapter II, III, or VI of this chap-

ter if the individual is obligated under any other Federal program to perform service after completion of the course of education or training of such individual referred to in subsection (a) of this section.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 518, §4302; amended Pub. L. 101-366, title II, §205(c)(2), Aug. 15, 1990, 104 Stat. 441; renumbered §7602, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105-368, title VIII, §805(2), Nov. 11, 1998, 112 Stat. 3358.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-368, §805(2)(A), substituted "subchapter II, III, or VI" for "subchapter I or II", substituted ", for which" for "or for which", and inserted before period at end ", or for which a scholarship may be awarded under subchapter VI of this chapter, as the case may be".

Subsec. (b). Pub. L. 105-368, §805(2)(B), substituted "subchapter II, III, or VI" for "subchapter I or II".

1991—Pub. L. 102-40 renumbered section 4302 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator" in pars. (1) and (2).

1990—Subsecs. (a)(1), (b). Pub. L. 101-366 inserted "under subchapter I or II of this chapter" after "Educational Assistance Program".

§ 7603. Application and acceptance

(a)(1) To apply to participate in the Educational Assistance Program under subchapter II, III, V, or VI of this chapter, an individual shall submit to the Secretary an application for such participation together with an agreement described in section 7604 of this title under which the participant agrees to serve a period of obligated service in the Veterans Health Administration as provided in the agreement in return for payment of educational assistance as provided in the agreement.

(2) To apply to participate in the Educational Assistance Program under subchapter VII of this chapter, an individual shall submit to the Secretary an application for such participation.

(b)(1) An individual becomes a participant in the Educational Assistance Program upon the Secretary's approval of the individual's application and the Secretary's acceptance of the agreement (if required).

(2) Upon the Secretary's approval of an individual's participation in the program, the Secretary shall promptly notify the individual of that approval. Such notice shall be in writing.

(c)(1) In distributing application forms and agreement forms to individuals desiring to participate in the Educational Assistance Program, the Secretary shall include with such forms the following:

(A) A fair summary of the rights and liabilities of an individual whose application is approved (and whose agreement is accepted) by the Secretary, including a clear explanation of the damages to which the United States is entitled if the individual breaches the agreement.

(B) A full description of the terms and conditions that apply to participation in the Educational Assistance Program and service in the Veterans Health Administration.

(2) The Secretary shall make such application forms and other information available to individuals desiring to participate in the Educational Assistance Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

(d) In selecting applicants for acceptance in the Educational Assistance Program, the Secretary shall give priority to the applications of individuals who have previously received educational assistance under the program and have not completed the course of education or training undertaken under such program.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 518, §4303; renumbered §7603 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(b)(1), Nov. 2, 1994, 108 Stat. 4682; Pub. L. 105-368, title VIII, §805(3), Nov. 11, 1998, 112 Stat. 3359; Pub. L. 106-419, title IV, §404(a)(10), Nov. 1, 2000, 114 Stat. 1865.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-419 substituted “subchapter” for “subsection”.

1998—Subsec. (a). Pub. L. 105-368, §805(3)(A), designated existing provisions as par. (1), substituted “To apply to participate in the Educational Assistance Program under subsection II, III, V, or VI of this chapter,” for “To apply to participate in the Educational Assistance Program,” and added par. (2).

Subsec. (b)(1). Pub. L. 105-368, §805(3)(B), inserted “(if required)” before period at end.

1994—Subsecs. (a), (c)(1)(B). Pub. L. 103-446 substituted “Veterans Health Administration” for “Department of Medicine and Surgery”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4303 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Pub. L. 102-40, §402(d)(1), substituted “7604” for “4304”.

Subsecs. (b) to (d). Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s” wherever appearing.

§ 7604. Terms of agreement

An agreement between the Secretary and a participant in the Educational Assistance Program shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary’s agreement—

(A) to provide the participant with educational assistance as authorized in subchapter II, III, V, or VI of this chapter and specified in the agreement; and

(B) to afford the participant the opportunity for employment in the Veterans Health Administration (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 7402 of this title).

(2) The participant’s agreement—

(A) to accept such educational assistance;

(B) to maintain enrollment and attendance in the course of training until completed;

(C) while enrolled in such course, to maintain an acceptable level of academic standing (as determined by the educational insti-

tution offering such course of training under regulations prescribed by the Secretary); and

(D) after completion of the course of training, to serve as a full-time employee in the Veterans Health Administration as specified in the agreement in accordance with subchapter II, III, V, or VI of this chapter.

(3) A provision that any financial obligation of the United States arising out of an agreement entered into under this chapter, and any obligation of the participant which is conditioned on such agreement, is contingent upon funds being appropriated for educational assistance under this chapter.

(4) A statement of the damages to which the United States is entitled under this chapter for the participant’s breach of the agreement.

(5) Such other terms as are required to be included in the agreement under subchapter II, III, V, or VI of this chapter or as the Secretary may require consistent with the provisions of this chapter.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 519, §4304; amended Pub. L. 101-366, title II, §205(c)(3), Aug. 15, 1990, 104 Stat. 441; renumbered §7604 and amended Pub. L. 102-40, title IV, §§402(b)(1), 403(b)(3), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(b)(1), (e)(26), Nov. 2, 1994, 108 Stat. 4682, 4686; Pub. L. 105-368, title VIII, §805(4), Nov. 11, 1998, 112 Stat. 3359.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “subchapter II, III, V, or VI” for “subchapter II, III, or V” in pars. (1)(A), (2)(D), and (5).

1994—Pub. L. 103-446, §1201(e)(26), substituted “subchapter II” for “subchapters II” in pars. (1)(A), (2)(D), and (5).

Pub. L. 103-446, §1201(b)(1), substituted “Veterans Health Administration” for “Department of Medicine and Surgery” in pars. (1)(B) and (2)(D).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4304 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s” wherever appearing.

Pub. L. 102-40, §403(b)(3), substituted “7402” for “4105” in par. (1)(B).

1990—Pars. (1)(A), (2)(D), (5). Pub. L. 101-366 substituted “subchapters II, III, or V” for “subchapter II or III”.

SUBCHAPTER II—SCHOLARSHIP PROGRAM

§ 7611. Authority for program

As part of the Educational Assistance Program, the Secretary shall carry out a scholarship program under this subchapter. The program shall be known as the Department of Veterans Affairs Health Professional Scholarship Program (hereinafter in this chapter referred to as the “Scholarship Program”).

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 520, §4311; renumbered §7611, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(2)(B)(vi), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4311 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" and "Department of Veterans Affairs" for "Veterans' Administration".

SUBMISSION OF OVERDUE REPORT

Pub. L. 105-114, title II, §207(b), Nov. 21, 1997, 111 Stat. 2289, provided that: "The Secretary of Veterans Affairs shall submit to Congress not later than 180 days after the date of the enactment of this Act [Nov. 21, 1997] the report evaluating the operation of the health professional scholarship program required to be submitted not later than March 31, 1997, under section 202(b) of Public Law 104-110 (110 Stat. 770) [set out below]."

HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

Pub. L. 104-110, title II, §202(b), Feb. 13, 1996, 110 Stat. 770, provided that:

"(1) The Secretary shall submit to Congress, not later than March 31, 1997, a report setting forth the results of a study evaluating the operation of the health professional scholarship program under subchapter II of chapter 76 of title 38, United States Code. The study shall evaluate the efficacy of the program with respect to recruitment and retention of health care personnel for the Department of Veterans Affairs and shall compare the costs and benefits of the program with the costs and benefits of alternative methods of ensuring adequate recruitment and retention of such personnel.

"(2) The Secretary shall carry out the study under this paragraph through a private contractor. The report under paragraph (1) shall include the report of the contractor and the comments, if any, of the Secretary on that report."

§ 7612. Eligibility; application; agreement

(a)(1) Except as provided in paragraph (2) of this subsection, an individual must be accepted for enrollment or be enrolled (as described in section 7602 of this title) as a full-time student to be eligible to participate in the Scholarship Program.

(2) An individual who is an eligible Department employee may be accepted as a participant if accepted for enrollment or enrolled (as described in section 7602 of this title) for study on less than a full-time but not less than a half-time basis. (Such a participant is hereinafter in this subchapter referred to as a "part-time student".)

(3) For the purposes of paragraph (2) of this subsection, an eligible Department employee is a full-time Department employee who is permanently assigned to a Department health-care facility on the date on which the individual submits the application referred to in section 7603 of this title and on the date on which the individual becomes a participant in the Scholarship Program.

(b)(1) A scholarship may be awarded under this subchapter only in a qualifying field of education or training.

(2) A qualifying field of education or training for purposes of this subchapter is education or training leading to employment as an appointee under paragraph (1) or (3) of section 7401 of this title.

(3) The Secretary may designate additional fields of education or training as qualifying fields of education or training if the education or training leads to employment in a position which would qualify the individual for increased basic pay under subsection (a)(1) of section 7455 of this title for personnel described in subsection (a)(2)(B) of such section.

(4) Before awarding the initial scholarship in a course of education or training other than medicine or nursing, the Secretary shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's intent to award a scholarship in such course of education or training. The notice shall include a statement of the reasons why the award of scholarships in that course of education or training is necessary to assist in providing the Department with an adequate supply of personnel in the health profession concerned. Any such notice shall be given not less than 60 days before the first such scholarship is awarded.

(5) In selecting applicants for the Scholarship Program, the Secretary—

(A) shall give priority to applicants who will be entering their final year in a course of training; and

(B) shall ensure an equitable allocation of scholarships to persons enrolled in the second year of a program leading to an associate degree in nursing.

(c)(1) An agreement between the Secretary and a participant in the Scholarship Program shall (in addition to the requirements set forth in section 7604 of this title) include the following:

(A) The Secretary's agreement to provide the participant with a scholarship under this subchapter for a specified number (from one to four) of school years during which the participant is pursuing a course of education or training described in section 7602 of this title.

(B) The participant's agreement to serve as a full-time employee in the Veterans Health Administration for a period of time (hereinafter in this subchapter referred to as the "period of obligated service") of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the Scholarship Program, but for not less than two years.

(2) In a case in which an extension is granted under section 7614(3) of this title, the number of years for which a scholarship may be provided under this subchapter shall be the number of school years provided for as a result of the extension.

(3) In the case of a participant who is a part-time student—

(A) the period of obligated service shall be reduced in accordance with the proportion that the number of credit hours carried by such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event to less than one year; and

(B) the agreement shall include the participant's agreement to maintain employment, while enrolled in such course of education or training, as a Department employee permanently assigned to a Department health-care facility.

(4) If a participant's period of obligated service is deferred under section 7616(b)(3)(A)(i) of this title, the agreement terms under paragraph (1) of this subsection shall provide for the participant to serve any additional period of obligated

service that is prescribed by the Secretary under section 7616(b)(4)(B) of this title.

(Added Pub. L. 100-322, title II, § 216(b), May 20, 1988, 102 Stat. 520, § 4312; amended Pub. L. 101-237, title II, § 207(a), Dec. 18, 1989, 103 Stat. 2068; renumbered § 7612 and amended Pub. L. 102-40, title IV, §§ 402(b)(1), (d)(1), 403(b)(4), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title II, § 202(a), Oct. 9, 1992, 106 Stat. 1983; Pub. L. 103-446, title XII, § 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682; Pub. L. 111-163, title VI, § 603(b), May 5, 2010, 124 Stat. 1173.)

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-163 substituted “as an appointee under paragraph (1) or (3) of section 7401 of this title.” for “(under section 7401 of this title) as any of the following:

“(A) A physician, dentist, podiatrist, optometrist, nurse, physician assistant, or expanded function dental auxiliary.

“(B) A psychologist described in section 7401(3) of this title or a certified or registered respiratory therapist, licensed physical therapist, or licensed practical or vocational nurse.”

1994—Subsec. (c)(1)(B). Pub. L. 103-446 substituted “Veterans Health Administration” for “Department of Medicine and Surgery”.

1992—Subsec. (c)(1)(B). Pub. L. 102-405 inserted before period at end “, but for not less than two years”.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4312 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, § 402(d)(1), substituted “7602” for “4302”.

Subsec. (a)(2). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-40, § 402(d)(1), substituted “7602” for “4302”.

Subsec. (a)(3). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Pub. L. 102-40, § 402(d)(1), substituted “7603” for “4303”.

Subsec. (b)(2). Pub. L. 102-40, § 403(b)(4)(A), substituted “7401” for “4104” in introductory provisions and “7401(3)” for “4104(3)” in subpar. (B).

Subsec. (b)(3). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-40, § 403(b)(4)(B), substituted “subsection (a)(1) of section 7455 of this title for personnel described in subsection (a)(2)(B) of such section” for “section 4107(g)(1)(B) of this title”.

Subsec. (b)(4). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s”.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Subsec. (c)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in introductory provisions and “Secretary’s” for “Administrator’s” in subpar. (A).

Pub. L. 102-40, § 402(d)(1), substituted “7604” for “4304” in introductory provisions and “7602” for “4302” in subpar. (A).

Subsec. (c)(2). Pub. L. 102-40, § 402(d)(1), substituted “7614(3)” for “4314(3)”.

Subsec. (c)(3)(B). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in two places.

Subsec. (c)(4). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-40, § 402(d)(1), substituted “7616(b)(3)(A)(i)” for “4316(b)(3)(A)(i)” and “7616(b)(4)(B)” for “4316(b)(4)(B)”.

1989—Subsec. (b)(5). Pub. L. 101-237 amended par. (5) generally. Prior to amendment, par. (5) read as follows:

“In selecting applicants for the Scholarship Program, the Administrator shall give priority to the applications of individuals who will be entering their final year in a course of training.”

EFFECTIVE DATE OF 1992 AMENDMENT

Section 202(b) of Pub. L. 102-405 provided that: “The amendment made by subsection (a) [amending this section] shall apply to scholarship agreements entered into after the date of the enactment of this Act [Oct. 9, 1992].”

IMPLEMENTATION OF EQUITABLE ALLOCATION PROVISIONS

Section 207(b) of Pub. L. 101-237 provided that: “The Secretary of Veterans Affairs shall provide for the implementation of the amendment made by subsection (a) [amending this section] beginning with scholarships awarded under section 4312 [now 7612] of title 38, United States Code, during 1990.”

§ 7613. Scholarship

(a) A scholarship provided to a participant in the Scholarship Program for a school year under the Scholarship Program shall consist of payment of the tuition of the participant for that school year, payment of other reasonable educational expenses (including fees, books, and laboratory expenses) for that school year, and a stipend determined under subsection (b) of this section.

(b) A stipend under this section for a school year shall be payment to the participant of not in excess of \$485 per month (adjusted in accordance with section 7631 of this title) for each of the 12 consecutive months beginning with the first month of the school year, except that a stipend may not be paid to a participant who is a full-time employee of the Department. The stipend of a participant who is a part-time student shall be adjusted as provided in sections 7614(1) and 7614(2) of this title.

(c) The Secretary may arrange with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in subsection (a) of this section. Such payments may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(Added Pub. L. 100-322, title II, § 216(b), May 20, 1988, 102 Stat. 521, § 4313; renumbered § 7613 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4313 of this title as this section.

Subsec. (b). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-40, § 402(d)(1), substituted “7631” for “4331” and “7614(1) and 7614(2)” for “4314(1) and 4314(2)”.

Subsec. (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

§ 7614. Part-time students

In the case of a participant who is a part-time student—

(1) the maximum amount of the stipend payable to the participant shall be reduced in ac-

cordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of education or training being pursued by the participant;

(2) a stipend may not be paid for any month during which the participant is not actually attending the course of training in which the participant is enrolled; and

(3) the Secretary may extend the period for which a scholarship may be awarded to the participant to a maximum of six school years if the Secretary determines that the extension would be in the best interest of the United States.

(Added Pub. L. 100-322, title II, § 216(b), May 20, 1988, 102 Stat. 522, § 4314; renumbered § 7614, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4314 of this title as this section.

Par. (3). Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

§ 7615. Status of participants

Participants in the Scholarship Program shall not by reason of their participation in such program (1) be considered to be employees of the Federal Government, or (2) be counted against any personnel ceiling affecting the Veterans Health Administration.

(Added Pub. L. 100-322, title II, § 216(b), May 20, 1988, 102 Stat. 522, § 4315; renumbered § 7615, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 103-446, title XII, § 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

AMENDMENTS

1994—Pub. L. 103-446 substituted "Veterans Health Administration" for "Department of Medicine and Surgery".

1991—Pub. L. 102-40 renumbered section 4315 of this title as this section.

§ 7616. Obligated service

(a) Each participant in the Scholarship Program shall provide service as a full-time employee of the Department for the period of obligated service provided in the agreement of the participant entered into under section 7603 of this title. Such service shall be provided in the full-time clinical practice of such participant's profession or in another health-care position in an assignment or location determined by the Secretary.

(b)(1) Not later than 60 days before the participant's service commencement date, the Secretary shall notify the participant of that service commencement date. That date is the date for the beginning of the participant's period of obligated service.

(2) As soon as possible after the participant's service commencement date, the Secretary shall—

(A) in the case of a participant who is not a full-time employee in the Veterans Health Ad-

ministration, appoint such participant as such an employee; and

(B) in the case of a participant who is an employee in the Veterans Health Administration but is not serving in a position for which such participant's course of education or training prepared such participant, assign such participant to such a position.

(3)(A)(i) In the case of a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the participant's service commencement date is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State. However, the Secretary may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Secretary shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

(B) In the case of a participant receiving a degree from a school of nursing, the participant's service commencement date is the later of (i) the participant's course completion date, or (ii) the date upon which the participant becomes licensed as a registered nurse in a State.

(C) In the case of a participant not covered by subparagraph (A) or (B) of this paragraph, the participant's service commencement date is the later of (i) the participant's course completion date, or (ii) the date the participant meets any applicable licensure or certification requirements.

(4) A participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 7423(d)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Department health-care facility. Such a participant may, at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service—

(A) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health-care requirements of the Department (as determined under regulations prescribed by the Secretary); or

(B) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not

in a medical specialty necessary to meet the health-care requirements of the Department (as determined under regulations prescribed by the Secretary).

(5) The Secretary shall by regulation prescribe the service commencement date for participants who were part-time students. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3) of this subsection.

(c)(1) Except as provided in paragraph (2) of this subsection, a participant in the Scholarship Program shall be considered to have begun serving such participant's period of obligated service—

(A) on the date, after such participant's course completion date, on which such participant (in accordance with subsection (b) of this section) is appointed under this chapter as a full-time employee in the Veterans Health Administration; or

(B) if the participant is a full-time employee in the Veterans Health Administration on such course completion date, on the date thereafter on which such participant is assigned to a position for which such participant's course of training prepared such participant.

(2) A participant in the Scholarship Program who on such participant's course completion date is a full-time employee in the Veterans Health Administration serving in a capacity for which such participant's course of training prepared such participant shall be considered to have begun serving such participant's period of obligated service on such course completion date.

(3) For the purposes of this section, the term "course completion date" means the date on which a participant in the Scholarship Program completes such participant's course of education or training under the program.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 522, §4316; renumbered §7616 and amended Pub. L. 102-40, title IV, §§402(b)(1), (d)(1), 403(b)(5), May 7, 1991, 105 Stat. 238-240; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

AMENDMENTS

1994—Subsecs. (b)(2), (c)(1), (2). Pub. L. 103-446 substituted "Veterans Health Administration" for "Department of Medicine and Surgery" wherever appearing.

1992—Subsec. (b)(4). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4316 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7603" for "4303".

Subsec. (b)(1) to (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (b)(4). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Pub. L. 102-40, §403(b)(5), substituted "7423(d)(1)" for "4108(c)(1)" in introductory provisions.

Subsec. (b)(5). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

§ 7617. Breach of agreement: liability

(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the agreement entered into under section 7603 of this title shall be liable to the United States for liquidated damages in the amount of \$1,500. Such liability is in addition to any period of obligated service or other obligation or liability under the agreement.

(b) A participant in the Scholarship Program shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the agreement if any of the following occurs:

(1) The participant fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (as determined by the educational institution under regulations prescribed by the Secretary).

(2) The participant is dismissed from such educational institution for disciplinary reasons.

(3) The participant voluntarily terminates the course of training in such educational institution before the completion of such course of training.

(4) The participant fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become licensed as a registered nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Secretary.

(5) In the case of a participant who is a part-time student, the participant fails to maintain employment, while enrolled in the course of training being pursued by such participant, as a Department employee permanently assigned to a Department health-care facility.

Liability under this subsection is in lieu of any service obligation arising under the participant's agreement.

(c)(1) If a participant in the Scholarship Program breaches the agreement by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A=3\Phi \left(\frac{t-s}{t} \right)$$

In such formula:

(A) "A" is the amount the United States is entitled to recover.

(B) “Φ” is the sum of (i) the amounts paid under this subchapter to or on behalf of the participant, and (ii) the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(C) “t” is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 7616(b)(4) of this title.

(D) “s” is the number of months of such period served by the participant in accordance with section 7613 of this title.

(2) Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 524, §4317; renumbered §7617 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4317 of this title as this section.

Subsec. (a). Pub. L. 102-40, §402(d)(1), substituted “7603” for “4303”.

Subsec. (b)(1), (4). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(5). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in two places.

Subsec. (c)(1). Pub. L. 102-40, §402(d)(1), substituted “7616(b)(4)” for “4316(b)(4)” in subpar. (C) and “7613” for “4313” in subpar. (D).

§ 7618. Additional program requirements

(a) PROGRAM MODIFICATION.—Notwithstanding any provision of this subchapter, the Secretary shall carry out this subchapter after the date of the enactment of this section by modifying the Scholarship Program in such a manner that the program and hiring processes are designed to fully employ Scholarship Program graduates as soon as possible, if not immediately, upon graduation and completion of necessary certifications, and to actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time following graduation.

(b) CLINICAL TOURS.—The Secretary shall require participants in the Scholarship Program to perform clinical tours in assignments or locations determined by the Secretary while the participants are enrolled in the course of education or training for which the scholarship is provided.

(c) MENTORS.—The Secretary shall ensure that at the commencement of the period of obligated service of a participant in the Scholarship Program, the participant is assigned to a mentor who is employed in the same facility where the participant performs such service.

(Added Pub. L. 111-163, title VI, §603(c)(2), May 5, 2010, 124 Stat. 1173.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 111-163, which was approved May 5, 2010.

PRIOR PROVISIONS

A prior section 7618 was renumbered section 7619 of this title.

§ 7619. Expiration of program

The Secretary may not furnish scholarships to new participants in the Scholarship Program after December 31, 2014.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 525, §4318; renumbered §7618, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title V, §523(a), Nov. 4, 1992, 106 Stat. 4959; Pub. L. 104-110, title I, §101(j), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105-114, title II, §207(a), Nov. 21, 1997, 111 Stat. 2289; renumbered §7619 and amended Pub. L. 111-163, title VI, §603(a), (c)(1), May 5, 2010, 124 Stat. 1173.)

AMENDMENTS

2010—Pub. L. 111-163, §603(c)(1), renumbered section 7618 of this title as this section.

Pub. L. 111-163, §603(a), substituted “December 31, 2014” for “December 31, 1998”.

1997—Pub. L. 105-114 substituted “December 31, 1998” for “December 31, 1997”.

1996—Pub. L. 104-110 substituted “December 31, 1997” for “December 31, 1995”.

1992—Pub. L. 102-585 substituted “December 31, 1995” for “September 30, 1992”.

1991—Pub. L. 102-40 renumbered section 4318 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

RATIFICATION OF ACTIONS DURING PERIOD OF EXPIRED AUTHORITY

Any action taken by Secretary of Veterans Affairs before Feb. 13, 1996, under provision of law amended by title I of Pub. L. 104-110 that was taken during period beginning on date on which authority of Secretary under such provision of law expired and ending on Feb. 13, 1996, considered to have same force and effect as if such amendment had been in effect at time of that action, see section 103 of Pub. L. 104-110, set out as a note under section 1710 of this title.

SUBCHAPTER III—TUITION REIMBURSEMENT PROGRAM

§ 7621. Authority for program

As part of the Educational Assistance Program, the Secretary shall carry out a tuition reimbursement program under this subchapter. The program shall be known as the Department of Veterans Affairs Nurse Education Tuition Reimbursement Program (hereinafter in this chapter referred to as the “Tuition Reimbursement Program”).

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 525, §4321; renumbered §7621, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(2)(B)(vi), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4321 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" and "Department of Veterans Affairs" for "Veterans' Administration".

§ 7622. Eligibility; application; agreement

(a) To be eligible to participate in the Tuition Reimbursement Program, an individual must be a full-time employee in the Department permanently assigned to a Department health-care facility and must be enrolled in a course of training offered by an institution approved by the Secretary leading toward completion of (1) an associate or higher degree in nursing, or (2) a masters degree or doctoral degree in nursing.

(b) In selecting applicants for acceptance in the Tuition Reimbursement Program, the Secretary (in addition to according priorities as set forth in section 7603(d) of this title) shall give special consideration and emphasis to individuals pursuing a course of study which will expedite an increase in the number of registered nurses employed by the Department. The Secretary shall then give priority, in the following order, to—

(1) individuals who have been employed as full-time employees in the Nursing Service in the Veterans Health Administration; and

(2) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

(c) An agreement between the Secretary and a participant in the Tuition Reimbursement Program shall (in addition to the requirements set forth in section 7604 of this title) contain the following:

(1) The Secretary's agreement to provide the participant with tuition reimbursement following successful completion (as determined, pursuant to regulations prescribed by the Secretary, by the educational institution involved) of (A) a course or courses required for the course of study described in subsection (a) of this section, or (B) a course or courses taken as necessary prerequisites for degree program enrollment if a letter regarding the potential enrollment of the participant from an appropriate official of the institution involved includes a statement specifying such prerequisites.

(2) The participant's agreement—

(A) to maintain employment, while enrolled in the course of training being pursued by such participant, as a full-time Department employee in the Veterans Health Administration permanently assigned to a Department health-care facility; and

(B) to continue to serve as a full-time employee in the Veterans Health Administration for one year (hereinafter in this subchapter referred to as the "period of obligated service") after completion of the course for which the participant received tuition reimbursement.

(d) Tuition reimbursement provided to a participant in the Tuition Reimbursement Program may not exceed \$2,000 per year (adjusted in accordance with section 7631 of this title).

(e) The Secretary may arrange with an educational institution pursuant to which such an institution would provide a course or courses at

a Department health-care facility to participate in the Tuition Reimbursement Program. Under such an arrangement, the Secretary may agree to pay to the institution an amount not in excess of an amount determined by multiplying the number of participants in such a course by the amount of tuition reimbursement each participant would receive for enrolling and successfully completing such course.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 525, §4322; renumbered §7622 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(b), Nov. 2, 1994, 108 Stat. 4682.)

AMENDMENTS

1994—Subsecs. (b)(1), (c)(2)(A). Pub. L. 103-446, §1201(b)(1), substituted "Veterans Health Administration" for "Department of Medicine and Surgery".

Subsec. (c)(2)(B). Pub. L. 103-446, §1201(b)(2), substituted "the Veterans Health Administration" for "such Department".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4322 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions.

Pub. L. 102-40, §402(d)(1), substituted "7603(d)" for "4303(d)".

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in par. (1) and "Secretary's" for "Administrator's" in par. (1).

Pub. L. 102-40, §402(d)(1), substituted "7604" for "4304" in introductory provisions.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places in par. (2)(A).

Subsec. (d). Pub. L. 102-54 amended subsec. (d) as in effect immediately before the enactment of Pub. L. 102-40 by inserting an open parenthesis before "adjusted in".

Pub. L. 102-40, §402(d)(1), substituted "7631" for "4331".

Subsec. (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

§ 7623. Obligated service

(a) Each participant in the Tuition Reimbursement Program shall provide service in the full-time clinical practice of such participant's profession as a full-time employee of the Department for the period of obligated service provided in the agreement of such participant entered into under section 7603 of this title.

(b) A participant who on such participant's course completion date is a full-time employee in the Veterans Health Administration shall be considered to have begun serving such participant's period of obligated service on the course completion date.

(c) Except in the case of a participant whose tuition was paid pursuant to section 7622(e) of

this title, if a participant in the Tuition Reimbursement Program fails to successfully complete a course, no reimbursement will be provided and no period of obligated service will be incurred.

(d) In the case of a participant whose tuition was paid pursuant to section 7622(e) of this title and who fails to complete the course involved, the period of obligation shall be of the same duration as it would have been if the participant had successfully completed the course and the course completion date shall be considered to be the date on which the participant's failure becomes an established fact.

(e) For the purposes of this section, the term "course completion date" means the date on which a participant in the Tuition Reimbursement Program completes such participant's course of training under the program.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 526, §4323; amended Pub. L. 100-687, div. B, title XV, §1503(a)(3), Nov. 18, 1988, 102 Stat. 4134; renumbered §7623 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103-446, title XII, §1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-446 substituted "Veterans Health Administration" for "Department of Medicine and Surgery".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4323 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7603" for "4303".

Subsecs. (c), (d). Pub. L. 102-40, §402(d)(1), substituted "7622(e)" for "4322(e)".

1988—Subsecs. (c), (d). Pub. L. 100-687 substituted "4322(e)" for "4322(f)".

§ 7624. Breach of agreement: liability

(a) A participant in the Tuition Reimbursement Program who fails to maintain employment as a Department employee permanently assigned to a Department health-care facility—

(1) may not be provided reimbursement for tuition for the course or courses in which the participant is enrolled; and

(2) in lieu of any service obligation arising from participation in the program, shall be liable to the United States for the amount which has been paid or is payable to or on behalf of the participant under the agreement, reduced by the proportion that the number of days served for completion of the service obligation bears to the total number of days in the participant's period of obligated service.

(b) Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 527, §4324; amended Pub. L. 100-687, div. B, title XV, §1503(a)(4), Nov. 18, 1988, 102 Stat. 4134; renumbered §7624, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4324 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100-687, §1503(a)(4)(A), substituted "participation in the program" for "completion of a course or courses in a previous semester or quarter", inserted "or is payable" after "has been paid", and inserted before period at end " , reduced by the proportion that the number of days served for completion of the service obligation bears to the total number of days in the participant's period of obligated service".

Subsec. (b). Pub. L. 100-687, §1503(a)(4)(B), struck out par. (1) which related to formula to apply to recover amount from participant who breaches agreement by failing to complete period of obligated service, and struck out par. (2) designation before "Any amount".

§ 7625. Allocation and distribution of funding

In determining the amount of funding to allocate to Department health-care facilities for any fiscal year in connection with the Tuition Reimbursement Program, the Secretary shall take into account (1) the personnel ceiling for that fiscal year for nursing personnel, and (2) the recruitment and retention needs of such facilities, as determined by the Secretary.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 527, §4325; renumbered §7625, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4325 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places and substituted "Department" for "Veterans' Administration".

SUBCHAPTER IV—ADMINISTRATIVE MATTERS

§ 7631. Periodic adjustments in amount of assistance

(a)(1) Whenever there is a general Federal pay increase, the Secretary shall increase the maximum monthly stipend amount, the maximum tuition reimbursement amount, the maximum Selected Reserve member stipend amount, the maximum employee incentive scholarship amount, and the maximum education debt reduction payments amount. Any such increase shall take effect with respect to any school year that ends in the fiscal year in which the pay increase takes effect.

(2) The amount of any increase under paragraph (1) of this subsection is the previous maximum amount under that paragraph multiplied by the overall percentage of the adjustment in the rates of pay under the General Schedule made under the general Federal pay increase. Such amount shall be rounded to the next lower multiple of \$1.

(b) For purposes of this section:

(1) The term "maximum monthly stipend amount" means the maximum monthly stipend that may be paid to a participant in the Scholarship Program specified in section

7613(b) of this title and as previously adjusted (if at all) in accordance with this section.

(2) The term “maximum tuition reimbursement amount” means the maximum amount of tuition reimbursement provided to a participant in the Tuition Reimbursement Program specified in section 7622(e) of this title and as previously adjusted (if at all) in accordance with this section.

(3) The term “maximum Selected Reserve member stipend amount” means the maximum amount of assistance provided to a person receiving assistance under subchapter V of this chapter, as specified in section 7653 of this title and as previously adjusted (if at all) in accordance with this section.

(4) The term “maximum employee incentive scholarship amount” means the maximum amount of the scholarship payable to a participant in the Department of Veterans Affairs Employee Incentive Scholarship Program under subchapter VI of this chapter, as specified in section 7673(b)(1) of this title and as previously adjusted (if at all) in accordance with this section.

(5) The term “maximum education debt reduction payments amount” means the maximum amount of education debt reduction payments payable to a participant in the Department of Veterans Affairs Education Debt Reduction Program under subchapter VII of this chapter, as specified in section 7683(d)(1) of this title and as previously adjusted (if at all) in accordance with this section.

(6) The term “general Federal pay increase” means an adjustment (if an increase) in the rates of pay under the General Schedule under subchapter III of chapter 53 of title 5.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 528, §4331; amended Pub. L. 101-366, title II, §205(b), Aug. 15, 1990, 104 Stat. 441; renumbered §7631 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(10), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107-135, title I, §§101(f), (g), 102(d)(1), Jan. 23, 2002, 115 Stat. 2448, 2449.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-135, §§101(f)(1), 102(d)(1)(A), substituted “the maximum Selected Reserve member stipend amount, the maximum employee incentive scholarship amount, and the maximum education debt reduction payments amount” for “and the maximum Selected Reserve member stipend amount”.

Subsec. (b)(1) to (3). Pub. L. 107-135, §101(g), substituted “this section” for “this subsection” in pars. (1) to (3).

Subsec. (b)(4). Pub. L. 107-135, §101(f)(2)(B), added par. (4). Former par. (4) redesignated (6).

Subsec. (b)(5). Pub. L. 107-135, §102(d)(1)(B), added par. (5).

Subsec. (b)(6). Pub. L. 107-135, §101(f)(2)(A), redesignated par. (4) as (6).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4331 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Subsec. (b)(1). Pub. L. 102-40, §402(d)(1), substituted “7613(b)” for “4313(b)”.

Subsec. (b)(2). Pub. L. 102-40, §402(d)(1), substituted “7622(e)” for “4322(e)”.

Subsec. (b)(3). Pub. L. 102-40, §402(d)(1), substituted “7653” for “4353”.

Subsec. (b)(4). Pub. L. 102-54 amended subsec. (b)(4) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “chapter 53” for “chapter 51”.

1990—Subsec. (a)(1). Pub. L. 101-366, §205(b)(1), substituted “stipend amount,” for “stipend amount and” and “reimbursement amount, and the maximum Selected Reserve member stipend amount” for “reimbursement amount”.

Subsec. (b)(3), (4). Pub. L. 101-366, §205(b)(2), added par. (3) and redesignated former par. (3) as (4).

ADJUSTMENT OF MAXIMUM EDUCATION DEBT REDUCTION PAYMENTS AMOUNT

Pub. L. 107-135, title I, §102(d)(2), Jan. 23, 2002, 115 Stat. 2449, prohibited an increase of the maximum education debt reduction payments amount in calendar year 2002.

TRANSITION

Section 216(d) of Pub. L. 100-322 provided that: “Section 4331 [now 7631] of title 38, United States Code, as added by subsection (b), shall not apply with respect to a school year ending during fiscal year 1988.”

§ 7632. Annual report

Not later than March 1 of each year, the Secretary shall submit to Congress a report on the Educational Assistance Program. Each such report shall include the following information:

(1) The number of students receiving educational assistance under the Educational Assistance Program, showing the numbers of students receiving assistance under the Scholarship Program, the Tuition Reimbursement Program, the Employee Incentive Scholarship Program, and the Education Debt Reduction Program separately, and the number of students (if any) enrolled in each type of health profession training under each program.

(2) The education institutions (if any) providing such training to students in each program.

(3) The number of applications filed under each program, by health profession category, during the school year beginning in such year and the total number of such applications so filed for all years in which the Educational Assistance Program (or predecessor program) has been in existence.

(4) The average amounts of educational assistance provided per participant in the Scholarship Program, per participant in the Tuition Reimbursement Program, per participant in the Employee Incentive Scholarship Program, and per participant in the Education Debt Reduction Program.

(5) The amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.

(6) The number of scholarships accepted, by health profession category, during the school year beginning in such year and the number, by health profession category, which were offered and not accepted.

(7) The number of participants who complete a course or course of training in each program each year and for all years that such program (or predecessor program) has been in existence.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 528, § 4332; renumbered §7632, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105-368, title VIII, §805(5), Nov. 11, 1998, 112 Stat. 3359.)

AMENDMENTS

1998—Par. (1). Pub. L. 105-368, §805(5)(A), substituted “, the Tuition Reimbursement Program, the Employee Incentive Scholarship Program, and the Education Debt Reduction Program” for “and the Tuition Reimbursement Program” and inserted “(if any)” after “number of students”.

Par. (2). Pub. L. 105-368, §805(5)(B), inserted “(if any)” after “education institutions”.

Par. (4). Pub. L. 105-368, §805(5)(C), substituted “, per participant” for “and per participant” and inserted “, per participant in the Employee Incentive Scholarship Program, and per participant in the Education Debt Reduction Program” before period at end.

1991—Pub. L. 102-40 renumbered section 4332 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 145 of House Document No. 103-7.

§ 7633. Regulations

The Secretary shall prescribe regulations to carry out the Educational Assistance Program.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 529, § 4333; renumbered §7633, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4333 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

§ 7634. Breach of agreement; waiver of liability

(a) An obligation under the Educational Assistance Program (or an agreement under the program) of a participant in the Educational Assistance Program for performance of services or payment of damages is canceled upon the death of the participant.

(b) The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under the Educational Assistance Program (or an agreement under the program) whenever non-compliance by the participant is due to circumstances beyond the control of the participant or whenever the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

(c) An obligation of a participant under the Educational Assistance Program (or an agreement thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 529, § 4334; renumbered §7634, Pub.

L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4334 of this title as this section.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

§ 7635. Service in other agencies

(a) The Secretary, with the consent of the participant or individual involved and the consent of the head of the department or agency involved, may permit—

(1) a period of obligated service required under this chapter to be performed in the Veterans Health Administration to be performed in another Federal department or agency or in the Armed Forces in lieu of performance of such service in the Veterans Health Administration; and

(2) a period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel educational assistance program to be performed in the Veterans Health Administration.

(b) This section shall be carried out in cooperation with the heads of other appropriate departments and agencies.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 529, § 4335; renumbered §7635, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted “Veterans Health Administration” for “Department of Medicine and Surgery” wherever appearing.

1991—Pub. L. 102-40 renumbered section 4335 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator” in introductory provisions.

§ 7636. Exemption of educational assistance payments from taxation

Notwithstanding any other law, any payment to, or on behalf of a participant in the Educational Assistance Program, for tuition, education expenses, a stipend, or education debt reduction under this chapter shall be exempt from taxation.

(Added Pub. L. 100-322, title II, §216(b), May 20, 1988, 102 Stat. 529, § 4336; renumbered §7636, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title VIII, §805(6), Nov. 11, 1998, 112 Stat. 3359.)

AMENDMENTS

1998—Pub. L. 105-368 substituted “a stipend, or education debt reduction” for “or a stipend”.

1991—Pub. L. 102-40 renumbered section 4336 of this title as this section.

SUBCHAPTER V—STIPEND PROGRAM FOR MEMBERS OF THE SELECTED RESERVE

§ 7651. Authority for program

(a) As part of the Educational Assistance Program, the Secretary of Veterans Affairs may se-

lect qualified individuals to receive assistance under this subchapter.

(b) To be eligible to receive assistance under this subchapter, an individual must be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads toward completion of a degree in a health profession involving direct patient care or care incident to direct patient care.

(Added Pub. L. 101-366, title II, §205(a)(1), Aug. 15, 1990, 104 Stat. 439, §4351; renumbered §7651, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4351 of this title as this section.

§ 7652. Eligibility: individuals entitled to benefits under the GI Bill program for members of the Selected Reserve

The Secretary of Veterans Affairs may not approve an application under section 7603 of this title of an individual applying to receive assistance under this subchapter unless—

(1) the individual is entitled to benefits under chapter 106 of title 10; and

(2) the score of the individual on the Armed Forces Qualification Test was above the 50th percentile.

(Added Pub. L. 101-366, title II, §205(a)(1), Aug. 15, 1990, 104 Stat. 440, §4352; renumbered §7652 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4352 of this title as this section and substituted “7603” for “4303” in introductory provisions.

§ 7653. Amount of assistance

The Secretary may pay to a person selected to receive assistance under this subchapter the amount of \$400 (adjusted in accordance with section 7631 of this title) for each month of the person's enrollment in a program of education or training covered by the agreement of the person entered into under section 7603 of this title. Payment of such benefits for any period shall be coordinated with any payment of benefits for the same period under chapter 106 of title 10.

(Added Pub. L. 101-366, title II, §205(a)(1), Aug. 15, 1990, 104 Stat. 440, §4353; renumbered §7653 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4353 of this title as this section and substituted “7631” for “4331” and “7603” for “4303”.

§ 7654. Obligated service

A person receiving assistance under this subchapter shall provide service in the full-time clinical practice of the person's profession as a full-time employee of the Department for the period of obligated service provided in the agreement of such person entered into under section 7603 of this title.

(Added Pub. L. 101-366, title II, §205(a)(1), Aug. 15, 1990, 104 Stat. 440, §4354; renumbered §7654 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4354 of this title as this section and substituted “7603” for “4303”.

§ 7655. Breach of agreement; liability

(a)(1) Subject to paragraph (2), an individual who is receiving or has received a reserve member stipend under this subchapter and who fails to perform the service for which the individual is obligated under section 7654 of this title shall be liable to the United States in an amount determined in accordance with section 7617(c)(1) of this title.

(2) An individual who, as a result of performing active duty (including active duty for training), is unable to perform the service for which the individual is obligated under section 7654 of this title shall be permitted to perform that service upon completion of the active duty service (or active duty for training). The Secretary may, by regulation, waive the requirement for the performance of the service for which the individual is obligated under section 7654 of this title in any case in which the Secretary determines that the individual is unable to perform the service for reasons beyond the control of the individual or in any case in which the waiver would be in the best interest of the individual and the United States.

(b) Any amount owed the United States under subsection (a) of this section shall be paid to the United States during the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 101-366, title II, §205(a)(1), Aug. 15, 1990, 104 Stat. 440, §4355; renumbered §7655 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4355 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, §402(d)(1), substituted “7654” for “4354” and “7617(c)(1)” for “4317(c)(1)”.

Subsec. (a)(2). Pub. L. 102-40, §402(d)(1), substituted “7654” for “4354” in two places.

SUBCHAPTER VI—EMPLOYEE INCENTIVE SCHOLARSHIP PROGRAM

§ 7671. Authority for program

As part of the Educational Assistance Program, the Secretary may carry out a scholarship program under this subchapter. The program shall be known as the Department of Veterans Affairs Employee Incentive Scholarship Program (hereinafter in this subchapter referred to as the “Program”). The purpose of the Program is to assist, through the establishment of an incentive program for individuals employed in the Veterans Health Administration, in meeting the staffing needs of the Veterans Health Administration for health professional occupations for which recruitment or retention of qualified personnel is difficult.

(Added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3352; amended Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

§ 7672. Eligibility; agreement

(a) **ELIGIBILITY.**—To be eligible to participate in the Program, an individual must be an eligible Department employee who is accepted for enrollment or enrolled (as described in section 7602 of this title) as a full-time or part-time student in a field of education or training described in subsection (c).

(b) **ELIGIBLE DEPARTMENT EMPLOYEES.**—For purposes of subsection (a), an eligible Department employee is any employee of the Department who, as of the date on which the employee submits an application for participation in the Program, has been continuously employed by the Department for not less than one year.

(c) **QUALIFYING FIELDS OF EDUCATION OR TRAINING.**—A scholarship may be awarded under the Program only for education and training in a field leading to appointment or retention in a position under section 7401 of this title.

(d) **AWARD OF SCHOLARSHIPS.**—Notwithstanding section 7603(d) of this title, the Secretary, in selecting participants in the Program, may award a scholarship only to applicants who have a record of employment with the Veterans Health Administration which, in the judgment of the Secretary, demonstrates a high likelihood that the applicant will be successful in completing such education or training and in employment in such field.

(e) **AGREEMENT.**—(1) An agreement between the Secretary and a participant in the Program shall (in addition to the requirements set forth in section 7604 of this title) include the following:

(A) The Secretary's agreement to provide the participant with a scholarship under the Program for a specified number (from one to three) of school years during which the participant pursues a course of education or training described in subsection (c) that meets the requirements set forth in section 7602(a) of this title.

(B) The participant's agreement to serve as a full-time employee in the Veterans Health Administration for a period of time (hereinafter in this subchapter referred to as the “period of obligated service”) determined in accordance with regulations prescribed by the Secretary of up to three calendar years for each school year or part thereof for which the participant was provided a scholarship under the Program, but for not less than 3 years.

(C) The participant's agreement to serve under subparagraph (B) in a Department facility selected by the Secretary.

(2) In a case in which an extension is granted under section 7673(c)(2) of this title, the number of years for which a scholarship may be provided under the Program shall be the number of school years provided for as a result of the extension.

(3) In the case of a participant who is a part-time student, the period of obligated service shall be reduced in accordance with the proportion that the number of credit hours carried by

such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event to less than 1 year.

(Added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3352; amended Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 107-135, title I, §101(b), Jan. 23, 2002, 115 Stat. 2447.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-135 substituted “one year” for “2 years”.

2001—Subsec. (e)(1)(B). Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

§ 7673. Scholarship

(a) **SCHOLARSHIP.**—A scholarship provided to a participant in the Program for a school year shall consist of payment of the tuition (or such portion of the tuition as may be provided under subsection (b)) of the participant for that school year and payment of other reasonable educational expenses (including fees, books, and laboratory expenses) for that school year.

(b) **AMOUNTS.**—The total amount of the scholarship payable under subsection (a)—

(1) in the case of a participant in the Program who is a full-time student, may not exceed \$10,000 for the equivalent of one year of full-time coursework; and

(2) in the case of a participant in the Program who is a part-time student, shall bear the same ratio to the amount that would be paid under paragraph (1) if the participant were a full-time student in the course of education or training being pursued by the participant as the coursework carried by the participant to full-time coursework in that course of education or training.

(c) **LIMITATIONS ON PERIOD OF PAYMENT.**—(1) The maximum number of school years for which a scholarship may be paid under subsection (a) to a participant in the Program shall be six school years.

(2) A participant in the Program may not receive a scholarship under subsection (a) for more than the equivalent of three years of full-time coursework.

(d) **PAYMENT OF EDUCATIONAL EXPENSES BY EDUCATIONAL INSTITUTIONS.**—The Secretary may arrange with an educational institution in which a participant in the Program is enrolled for the payment of the educational expenses described in subsection (a). Such payments may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(e) **FULL-TIME COURSEWORK.**—For purposes of this section, full-time coursework shall consist of the following:

(1) In the case of undergraduate coursework, 30 semester hours per undergraduate school year.

(2) In the case of graduate coursework, 18 semester hours per graduate school year.

(Added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3353; amended Pub. L. 107-135, title I, §101(c)–(e), Jan. 23, 2002, 115 Stat. 2447, 2448.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-135, §101(c)(1), substituted “for the equivalent of one year of full-time coursework” for “for any 1 year”.

Subsec. (b)(2). Pub. L. 107-135, §101(c)(2), added par. (2) and struck out former par. (2) which read as follows: “in the case of a participant in the Program who is a part-time student, shall be the amount specified in paragraph (1) reduced in accordance with the proportion that the number of credit hours carried by the participant in that school year bears to the number of credit hours required to be carried by a full-time student in the course of education or training being pursued by the participant.”

Subsec. (c). Pub. L. 107-135, §101(d), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

“(1) Subject to paragraph (2), a participant in the Program may not receive a scholarship under subsection (a) for more than three school years.

“(2) The Secretary may extend the number of school years for which a scholarship may be awarded to a participant in the Program who is a part-time student to a maximum of six school years if the Secretary determines that the extension would be in the best interest of the United States.”

Subsec. (e). Pub. L. 107-135, §101(e), added subsec. (e).

§ 7674. Obligated service

(a) **IN GENERAL.**—Each participant in the Program shall provide service as a full-time employee of the Department for the period of obligated service provided in the agreement of the participant entered into under section 7603 of this title. Such service shall be provided in the full-time clinical practice of such participant's profession or in another health-care position in an assignment or location determined by the Secretary.

(b) **DETERMINATION OF SERVICE COMMENCEMENT DATE.**—(1) Not later than 60 days before a participant's service commencement date, the Secretary shall notify the participant of that service commencement date. That date is the date for the beginning of the participant's period of obligated service.

(2) As soon as possible after a participant's service commencement date, the Secretary shall—

(A) in the case of a participant who is not a full-time employee in the Veterans Health Administration, appoint the participant as such an employee; and

(B) in the case of a participant who is an employee in the Veterans Health Administration but is not serving in a position for which the participant's course of education or training prepared the participant, assign the participant to such a position.

(3)(A) In the case of a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the participant's service commencement date is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State.

(B) In the case of a participant receiving a degree from a school of nursing, the participant's service commencement date is the later of—

(i) the participant's course completion date; or

(ii) the date upon which the participant becomes licensed as a registered nurse in a State.

(C) In the case of a participant not covered by subparagraph (A) or (B), the participant's service commencement date is the later of—

(i) the participant's course completion date; or

(ii) the date the participant meets any applicable licensure or certification requirements.

(4) The Secretary shall by regulation prescribe the service commencement date for participants who were part-time students. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3).

(c) **COMMENCEMENT OF OBLIGATED SERVICE.**—(1) Except as provided in paragraph (2), a participant in the Program shall be considered to have begun serving the participant's period of obligated service—

(A) on the date, after the participant's course completion date, on which the participant (in accordance with subsection (b)) is appointed as a full-time employee in the Veterans Health Administration; or

(B) if the participant is a full-time employee in the Veterans Health Administration on such course completion date, on the date thereafter on which the participant is assigned to a position for which the participant's course of training prepared the participant.

(2) A participant in the Program who on the participant's course completion date is a full-time employee in the Veterans Health Administration serving in a capacity for which the participant's course of training prepared the participant shall be considered to have begun serving the participant's period of obligated service on such course completion date.

(d) **COURSE COMPLETION DATE DEFINED.**—In this section, the term “course completion date” means the date on which a participant in the Program completes the participant's course of education or training under the Program.

(Added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3354.)

§ 7675. Breach of agreement: liability

(a) **LIQUIDATED DAMAGES.**—A participant in the Program (other than a participant described in subsection (b)) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the agreement entered into under section 7603 of this title shall be liable to the United States for liquidated damages in the amount of \$1,500. Such liability is in addition to any period of obligated service or other obligation or liability under the agreement.

(b) **LIABILITY DURING COURSE OF EDUCATION OR TRAINING.**—(1) Except as provided in subsection (d), a participant in the Program shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the agreement if any of the following occurs:

(A) The participant fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (as determined by the educational institution under regulations prescribed by the Secretary).

(B) The participant is dismissed from such educational institution for disciplinary reasons.

(C) The participant voluntarily terminates the course of education or training in such educational institution before the completion of such course of education or training.

(D) The participant fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become licensed as a registered nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Secretary.

(E) In the case of a participant who is a part-time student, the participant fails to maintain employment, while enrolled in the course of training being pursued by the participant, as a Department employee.

(2) Liability under this subsection is in lieu of any service obligation arising under a participant's agreement.

(c) **LIABILITY DURING PERIOD OF OBLIGATED SERVICE.**—(1) Except as provided in subsection (d), if a participant in the Program breaches the agreement by failing for any reason to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A=3\Phi \left(\frac{t-s}{t} \right)$$

(2) In such formula:

(A) "A" is the amount the United States is entitled to recover.

(B) "Φ" is the sum of—

(i) the amounts paid under this subchapter to or on behalf of the participant; and

(ii) the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(C) "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 7673(c)(2) of this title.

(D) "s" is the number of months of such period served by the participant in accordance with section 7673 of this title.

(d) **LIMITATION ON LIABILITY FOR REDUCTIONS-IN-FORCE.**—Liability shall not arise under subsection (b)(1)(E) or (c) in the case of a participant otherwise covered by the subsection concerned if the participant fails to maintain employment as a Department employee due to a staffing adjustment.

(e) **PERIOD FOR PAYMENT OF DAMAGES.**—Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the 1-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3355.)

§ 7676. Repealed. Pub. L. 107-135, title I, § 101(a)(1), Jan. 23, 2002, 115 Stat. 2447]

Section, added Pub. L. 105-368, title VIII, §802(a), Nov. 11, 1998, 112 Stat. 3356, provided that the Secretary could not furnish scholarships to individuals who had not commenced participation in the Program before Dec. 31, 2001.

SUBCHAPTER VII—EDUCATION DEBT REDUCTION PROGRAM

§ 7681. Authority for program

(a) **IN GENERAL.**—(1) As part of the Educational Assistance Program, the Secretary may carry out an education debt reduction program under this subchapter. The program shall be known as the Department of Veterans Affairs Education Debt Reduction Program (hereinafter in this subchapter referred to as the "Education Debt Reduction Program").

(2) The purpose of the Education Debt Reduction Program is to assist in the recruitment and retention of qualified health care professionals for positions in the Veterans Health Administration for which recruitment or retention of an adequate supply of qualified personnel is difficult.

(b) **RELATIONSHIP TO EDUCATIONAL ASSISTANCE PROGRAM.**—Education debt reduction payments under the Education Debt Reduction Program may be in addition to other assistance available to individuals under the Educational Assistance Program.

(Added Pub. L. 105-368, title VIII, §803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 111-163, title III, §301(a), May 5, 2010, 124 Stat. 1146.)

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-163 inserted "and retention" after "assist in the recruitment".

2001—Subsec. (a)(1). Pub. L. 107-14 substituted "hereinafter" for "hereafter".

LOAN REPAYMENT PROGRAM FOR CLINICAL RESEARCHERS FROM DISADVANTAGED BACKGROUNDS

Pub. L. 111-163, title VI, §604, May 5, 2010, 124 Stat. 1174, provided that:

"(a) **IN GENERAL.**—The Secretary of Veterans Affairs may, in consultation with the Secretary of Health and Human Services, use the authorities available in section 487E of the Public Health Service Act (42 U.S.C. 288-5) for the repayment of the principal and interest of educational loans of appropriately qualified health professionals who are from disadvantaged backgrounds in order to secure clinical research by such professionals for the Veterans Health Administration.

"(b) **LIMITATIONS.**—The exercise by the Secretary of Veterans Affairs of the authorities referred to in subsection (a) shall be subject to the conditions and limitations specified in paragraphs (2) and (3) of section 487E(a) of the Public Health Service Act (42 U.S.C. 288-5(a)(2) and (3)).

"(c) **FUNDING.**—Amounts for the repayment of principal and interest of educational loans under this section shall be derived from amounts available to the Secretary of Veterans Affairs for the Veterans Health Administration for Medical Services."

§ 7682. Eligibility

(a) **ELIGIBILITY.**—An individual is eligible to participate in the Education Debt Reduction Program if the individual—

(1) is an employee in the Veterans Health Administration serving in a position (as determined by the Secretary) providing direct-patient care services or services incident to direct-patient care services for which recruitment or retention of qualified health-care personnel (as so determined) is difficult; and

(2) owes any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a course of education or training which led to a degree that qualified the individual for the position referred to in paragraph (1).

(b) **COVERED COSTS.**—For purposes of subsection (a)(2), costs relating to a course of education or training include—

(1) tuition expenses;

(2) all other reasonable educational expenses, including expenses for fees, books, and laboratory expenses; and

(3) reasonable living expenses.

(Added Pub. L. 105-368, title VIII, §803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107-135, title I, §102(b), Jan. 23, 2002, 115 Stat. 2448; Pub. L. 111-163, title III, §301(b), May 5, 2010, 124 Stat. 1146.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-163, §301(b)(1), substituted “an” for “a recently appointed”.

Subsec. (c). Pub. L. 111-163, §301(b)(2), struck out subsec. (c). Text read as follows: “For purposes of subsection (a), an individual shall be considered to be recently appointed to a position if the individual has held that position for less than 6 months.”

2002—Subsec. (a)(1). Pub. L. 107-135 substituted “in a position (as determined by the Secretary) providing direct-patient care services or services incident to direct-patient care services” for “under an appointment under section 7402(b) of this title in a position” and “(as so determined)” for “(as determined by the Secretary)”.

TEMPORARY EXPANSION OF INDIVIDUALS ELIGIBLE FOR PARTICIPATION IN PROGRAM

Pub. L. 107-135, title I, §102(e), Jan. 23, 2002, 115 Stat. 2449, granted the Secretary of Veterans Affairs authority to treat certain individuals as recently appointed employees in the Veterans Health Administration under subsec. (a) of this section for purposes of eligibility in the Education Debt Reduction Program under this subchapter but prohibited exercise of this authority after June 30, 2002.

§ 7683. Education debt reduction

(a) **IN GENERAL.**—Education debt reduction payments under the Education Debt Reduction Program shall consist of payments to individuals selected to participate in the program of amounts to reimburse such individuals for payments by such individuals of principal and interest on loans described in section 7682(a)(2) of this title.

(b) **FREQUENCY OF PAYMENT.**—(1) The Secretary may make education debt reduction payments to any given participant in the Education Debt Reduction Program on a monthly or annual basis, as determined by the Secretary.

(2) The Secretary shall make such payments at the end of the period determined by the Secretary under paragraph (1).

(c) **PERFORMANCE REQUIREMENT.**—The Secretary may make education debt reduction payments to a participant in the Education Debt Reduction Program for a period only if the Secretary determines that the individual maintained an acceptable level of performance in the position or positions served by the participant during the period.

(d) **MAXIMUM ANNUAL AMOUNT.**—(1) Subject to paragraph (2), the amount of education debt reduction payments made to a participant under the Education Debt Reduction Program may not exceed \$60,000 over a total of five years of participation in the Program, of which not more than \$12,000 of such payments may be made in each of the fourth and fifth years of participation in the Program.

(2) The total amount payable to a participant in such Program for any year may not exceed the amount of the principal and interest on loans referred to in subsection (a) that is paid by the individual during such year.

(3)(A) The Secretary may waive the limitations under paragraphs (1) and (2) in the case of a participant described in subparagraph (B). In the case of such a waiver, the total amount of education debt repayments payable to that participant is the total amount of the principal and the interest on the participant's loans referred to in subsection (a).

(B) A participant described in this subparagraph is a participant in the Program who the Secretary determines serves in a position for which there is a shortage of qualified employees by reason of either the location or the requirements of the position.

(Added Pub. L. 105-368, title VIII, §803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107-135, title I, §102(c), Jan. 23, 2002, 115 Stat. 2448; Pub. L. 111-163, title III, §301(c), (d), May 5, 2010, 124 Stat. 1146.)

AMENDMENTS

2010—Subsec. (d)(1). Pub. L. 111-163, §301(c), substituted “\$60,000” for “\$44,000” and “\$12,000” for “\$10,000”.

Subsec. (d)(3). Pub. L. 111-163, §301(d), added par. (3).

2002—Subsec. (d)(1). Pub. L. 107-135 struck out “for a year” after “a participant” and substituted “exceed \$44,000 over a total of five years of participation in the Program, of which not more than \$10,000 of such payments may be made in each of the fourth and fifth years of participation in the Program” for “exceed—

“(A) \$6,000 for the first year of the participant's participation in the Program;

“(B) \$8,000 for the second year of the participant's participation in the Program; and

“(C) \$10,000 for the third year of the participant's participation in the Program”.

[§ 7684. Repealed. Pub. L. 107-135, title I, § 102(a)(1), Jan. 23, 2002, 115 Stat. 2448]

Section, added Pub. L. 105-368, title VIII, §803(a), Nov. 11, 1998, 112 Stat. 3358, provided that the Secretary could not make education debt reduction payments to individuals who had not commenced participation in the Education Debt Reduction Program before Dec. 31, 2001.

CHAPTER 77—VETERANS BENEFITS ADMINISTRATION

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.	
7701.	Organization of the Administration.
7703.	Functions of the Administration.

SUBCHAPTER II—QUALITY ASSURANCE

7731.	Establishment.
7732.	Functions.
7732A.	Employee certification.
7733.	Personnel.
7734.	Annual report to Congress.

AMENDMENTS

2008—Pub. L. 110-389, title II, § 225(a)(2), Oct. 10, 2008, 122 Stat. 4158, added item 7732A.

2006—Pub. L. 109-233, title IV, § 402(d)(2), June 15, 2006, 120 Stat. 411, substituted “QUALITY ASSURANCE” for “VETERANS OUTREACH SERVICES PROGRAM” in item for subchapter II and struck out former items 7721 “Purpose; definitions”, 7722 “Outreach services”, 7723 “Veterans assistance offices”, 7724 “Outstationing of counseling and outreach personnel”, 7725 “Use of other agencies”, 7726 “Annual report to Congress”, 7727 “Outreach for eligible dependents”, and subchapter III “QUALITY ASSURANCE”.

2001—Pub. L. 107-14, § 6(b)(2), June 5, 2001, 115 Stat. 31, added item 7727.

1999—Pub. L. 106-117, title VIII, § 801(a)(2), Nov. 30, 1999, 113 Stat. 1586, added heading for subchapter III and items 7731 to 7734.

SUBCHAPTER I—ORGANIZATION; GENERAL

§ 7701. Organization of the Administration

(a) There is in the Department of Veterans Affairs a Veterans Benefits Administration. The primary function of the Veterans Benefits Administration is the administration of non-medical benefits programs of the Department which provide assistance to veterans and their dependents and survivors.

(b) The Veterans Benefits Administration is under the Under Secretary for Benefits, who is directly responsible to the Secretary for the operations of the Administration. The Under Secretary for Benefits may be referred to as the Chief Benefits Director.

(Added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 399; amended Pub. L. 102-405, title III, § 302(c)(1), (3), Oct. 9, 1992, 106 Stat. 1984.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-405 substituted “Under Secretary for Benefits” for “Chief Benefits Director” and inserted at end “The Under Secretary for Benefits may be referred to as the Chief Benefits Director.”

§ 7703. Functions of the Administration

The Veterans Benefits Administration is responsible for the administration of the following programs of the Department:

- (1) Compensation and pension programs.
- (2) Vocational rehabilitation and educational assistance programs.
- (3) Veterans' housing loan programs.
- (4) Veterans' and servicemembers' life insurance programs.
- (5) Outreach programs and other veterans' services programs.

(Added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 399.)

SUBCHAPTER II—QUALITY ASSURANCE

PRIOR PROVISIONS

A prior subchapter II of this chapter, consisting of sections 7721 to 7727, related to the veterans outreach services program, prior to repeal by Pub. L. 109-233, title IV, § 402(c), June 15, 2006, 120 Stat. 411. See chapter 63 of this title.

Section 7721, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 400; amended Pub. L. 107-14, § 6(a), June 5, 2001, 115 Stat. 30, stated purpose of program and defined “other governmental programs” and “eligible dependent” for purposes of the subchapter. See section 6301 of this title.

Section 7722, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 400; amended Pub. L. 102-590, § 5, Nov. 10, 1992, 106 Stat. 5139; Pub. L. 107-103, title III, § 304, Dec. 27, 2001, 115 Stat. 992, directed Secretary to provide outreach services. See section 6303 of this title.

Section 7723, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 401; amended Pub. L. 107-103, title III, § 301, Dec. 27, 2001, 115 Stat. 991; Pub. L. 108-183, title III, § 309(c)(1), Dec. 16, 2003, 117 Stat. 2663, directed Secretary to establish and maintain veterans assistance offices. See section 6304 of this title.

Section 7724, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 401, related to outstationing of counseling and outreach personnel. See section 6305 of this title.

Section 7725, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 401, related to use of other agencies. See section 6306 of this title.

Section 7726, added Pub. L. 102-83, § 2(b), Aug. 6, 1991, 105 Stat. 402, related to the required annual report to Congress. See section 6308 of this title.

Section 7727, added Pub. L. 107-14, § 6(b)(1), June 5, 2001, 115 Stat. 31, related to outreach for eligible dependents. See section 6307 of this title.

AMENDMENTS

2006—Pub. L. 109-233, title IV, § 402(d)(1), June 15, 2006, 120 Stat. 411, redesignated subchapter III of this chapter as this subchapter.

§ 7731. Establishment

(a) The Secretary shall carry out a quality assurance program in the Veterans Benefits Administration. The program may be carried out through a single quality assurance division in the Administration or through separate quality assurance entities for each of the principal organizational elements (known as “services”) of the Administration.

(b) The Secretary shall ensure that any quality assurance entity established and operated under subsection (a) is established and operated so as to meet generally applicable governmental standards for independence and internal controls for the performance of quality reviews of Government performance and results.

(c)(1) The Secretary shall enter into a contract with an independent third-party entity to conduct, during the three-year period beginning on the date of the enactment of the Veterans' Benefits Improvement Act of 2008, an assessment of the quality assurance program carried out under subsection (a).

(2) The assessment conducted under paragraph (1) shall evaluate the following:

(A) The quality and accuracy of the work of employees of the Veterans Benefits Administration, using a statistically valid sample of such employees and a statistically valid sample of such work.

(B) The performance of each regional office of the Veterans Benefits Administration.

(C) The accuracy of the disability ratings assigned under the schedule for rating disabilities under section 1155 of this title.

(D) The consistency of disability ratings among regional offices of the Veterans Benefits Administration, based on a sample of specific disabilities.

(E) The performance of employees and managers of the Veterans Benefits Administration.

(3) The Secretary shall develop a mechanism for the automated gathering and producing of data that can be used to monitor and assess trends relating to the items described in paragraph (2).

(4)(A) Beginning on the date that is six months after the date of the enactment of the Veterans' Benefits Improvement Act of 2008, the Secretary shall—

(i) for each claim for disability compensation under laws administered by the Secretary submitted to the Secretary on or after such date, retain, monitor, and store in an accessible format the data described in subparagraph (B); and

(ii) develop a demographic baseline for the data retained, monitored, and stored under subparagraph (A).

(B) The data described in this subparagraph includes the following:

(i) For each claim for disability compensation under laws administered by the Secretary submitted by a claimant—

(I) the State in which the claimant resided when the claim was submitted;

(II) the decision of the Secretary with respect to the claim and each issue claimed; and

(III) the regional office and individual employee of the Department responsible for rating the claim.

(ii) The State in which the claimant currently resides.

(iii) Such other data as the Secretary determines is appropriate for monitoring the accuracy and consistency of decisions with respect to such claims.

(5) Nothing in this subsection shall be construed to require the Secretary to replace the quality assurance program under subsection (a) that was in effect on the day before the date of the enactment of this subsection.

(Added Pub. L. 106–117, §801(a)(1), Nov. 30, 1999, 113 Stat. 1585; amended Pub. L. 110–389, title II, §224(a), Oct. 10, 2008, 122 Stat. 4157.)

REFERENCES IN TEXT

The date of the enactment of the Veterans' Benefits Improvement Act of 2008 and the date of the enactment of this subsection, referred to in subsec. (c)(1), (4)(A), (5), mean the date of enactment of Pub. L. 110–389, which was approved Oct. 10, 2008.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–389 added subsec. (c).

EFFECTIVE DATE

Pub. L. 106–117, title VIII, §801(b), Nov. 30, 1999, 113 Stat. 1586, provided that: “Subchapter III [now Subchapter II] of chapter 77 of title 38, United States Code, as added by subsection (a), shall take effect at the end

of the 60-day period beginning on the date of the enactment of this Act [Nov. 30, 1999].”

§ 7732. Functions

The Under Secretary for Benefits, acting through the quality assurance entities established under section 7731(a), shall on an ongoing basis perform and oversee quality reviews of the functions of each of the principal organizational elements of the Veterans Benefits Administration.

(Added Pub. L. 106–117, §801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

§ 7732A. Employee certification

(a) DEVELOPMENT OF CERTIFICATION EXAMINATION.—(1) The Secretary shall provide for an examination of appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary.

(2) In developing the examination required by paragraph (1), the Secretary shall—

(A) consult with appropriate individuals or entities, including examination development experts, interested stakeholders, and employee representatives; and

(B) consider the data gathered and produced under section 7731(c)(3) of this title.

(b) EMPLOYEE AND MANAGER REQUIREMENT.—The Secretary shall require appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary to take the examination provided under subsection (a).

(Added Pub. L. 110–389, title II, §225(a)(1), Oct. 10, 2008, 122 Stat. 4158.)

DEADLINES FOR IMPLEMENTATION

Pub. L. 110–389, title II, §225(a)(3), Oct. 10, 2008, 122 Stat. 4158, provided that: “The Secretary of Veterans Affairs shall—

“(A) develop an updated certification examination required under section 7732A of title 38, United States Code, as added by subsection (a), not later than one year after the date of the enactment of this Act [Oct. 10, 2008]; and

“(B) begin administering such certification examination required under such section not later than 90 days after the date on which the development of such certification examination is complete.”

§ 7733. Personnel

The Secretary shall ensure that the number of full-time employees of the Veterans Benefits Administration assigned to quality assurance functions under this subchapter is adequate to perform the quality assurance functions for which they have responsibility.

(Added Pub. L. 106–117, §801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

§ 7734. Annual report to Congress

The Secretary shall include in the annual report to the Congress required by section 529 of this title a report on the quality assurance ac-

tivities carried out under this subchapter. Each such report shall include—

(1) an appraisal of the quality of services provided by the Veterans Benefits Administration, including—

- (A) the number of decisions reviewed;
- (B) a summary of the findings on the decisions reviewed;
- (C) the number of full-time equivalent employees assigned to quality assurance in each division or entity;
- (D) specific documentation of compliance with the standards for independence and internal control required by section 7731(b) of this title; and
- (E) actions taken to improve the quality of services provided and the results obtained;

(2) information with respect to the accuracy of decisions, including trends in that information; and

(3) such other information as the Secretary considers appropriate.

(Added Pub. L. 106-117, §801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

CHAPTER 78—VETERANS' CANTEEN SERVICE

Sec.

- 7801. Purpose of Veterans' Canteen Service.
- 7802. Duties of Secretary with respect to Service.
- 7803. Operation of Service.
- 7804. Financing of Service.
- 7805. Revolving fund.
- 7806. Budget of Service.
- 7807. Audit of accounts.
- 7808. Service to be independent unit.
- 7809. Child-care centers.
- 7810. Exemption from personnel ceilings.

AMENDMENTS

1991—Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405, substituted "Secretary" for "Administrator" in item 7802.

Pub. L. 102-40, title IV, §402(a), (c)(1), May 7, 1991, 105 Stat. 238, 239, redesignated chapter 75 of this title as this chapter and renumbered items 4201 to 4210 as 7801 to 7810, respectively.

1988—Pub. L. 100-322, title IV, §§412(b), 414(b)(2), May 20, 1988, 102 Stat. 548, 549, added items 4209 and 4210.

§ 7801. Purpose of Veterans' Canteen Service

The Veterans' Canteen Service (hereinafter in this chapter referred to as the "Service") in the Department is an instrumentality of the United States, created for the primary purpose of making available to veterans of the Armed Forces who are hospitalized or domiciled in hospitals and homes of the Department, at reasonable prices, articles of merchandise and services essential to their comfort and well-being.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1248, §4201; renumbered §7801 and amended Pub. L. 102-40, title IV, §402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Pub. L. 107-14 substituted "hereinafter" for "hereafter".

1991—Pub. L. 102-40 renumbered section 4201 of this title as this section.

Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places.

§ 7802. Duties of Secretary with respect to Service

(a) LOCATIONS FOR CANTEENS.—The Secretary shall establish, maintain, and operate canteens where deemed necessary and practicable at hospitals and homes of the Department and at other Department establishments where similar essential facilities are not reasonably available from outside commercial sources.

(b) WAREHOUSES AND STORAGE DEPOTS.—The Secretary shall establish, maintain, and operate such warehouses and storage depots as may be necessary in operating the canteens.

(c) SPACE, BUILDINGS, AND STRUCTURES.—The Secretary shall furnish the Service for its use in connection with the establishment, maintenance, and operation thereof, such space, buildings, and structures under control of the Department as the Secretary may consider necessary, including normal maintenance and repair service thereon. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the space, buildings, and structures so furnished, except that the Secretary may reduce or waive such charges whenever payment of such charges would impair the working capital required by the Service.

(d) EQUIPMENT, SERVICES, AND UTILITIES.—The Secretary shall transfer to the Service without charge, rental, or reimbursement such necessary equipment as may not be needed for other purposes, and furnish the Service such services and utilities, including light, water, and heat, as may be available and necessary for its use. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the utilities so furnished.

(e) PERSONNEL.—The Secretary shall employ such persons as are necessary for the establishment, maintenance, and operation of the Service, and pay the salaries, wages, and expenses of all such employees from the funds of the Service. Personnel necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots shall be appointed, compensated from funds of the Service, and removed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5. Those employees are subject to the provisions of title 5 relating to a preference eligible described in section 2108(3) of title 5, subchapter I of chapter 81 of title 5, and subchapter III of chapter 83 of title 5. An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service.

(f) CONTRACTS AND AGREEMENTS.—The Secretary shall make all necessary contracts or agreements to purchase or sell merchandise, fixtures, equipment, supplies, and services, without

regard to section 6101(b) to (d) of title 41 and to do all things necessary to carry out such contracts or agreements, including the making of necessary adjustments and compromising of claims in connection therewith.

(g) **PRICES.**—The Secretary shall fix the prices of merchandise and services in canteens so as to carry out the purposes of this chapter.

(h) **GIFTS AND DONATIONS.**—The Secretary may accept gifts and donations of merchandise, fixtures, equipment, and supplies for the use and benefit of the Service.

(i) **RULES AND REGULATIONS.**—The Secretary shall make such rules and regulations, not inconsistent with the provisions of this chapter, as the Secretary considers necessary or appropriate to effectuate its purposes.

(j) **DELEGATION.**—The Secretary may delegate such duties and powers to employees as the Secretary considers necessary or appropriate, whose official acts performed within the scope of the delegated authority shall have the same force and effect as though performed by the Secretary.

(k) **AUTHORITY TO CASH CHECKS, ETC.**—The Secretary may authorize the use of funds of the Service when available, subject to such regulations as the Secretary may deem appropriate, for the purpose of cashing checks, money orders, and similar instruments in nominal amounts for the payment of money presented by veterans hospitalized or domiciled at hospitals and homes of the Department, and by other persons authorized by section 7803 of this title to make purchases at canteens. Such checks, money orders, and other similar instruments may be cashed outright or may be accepted, subject to strict administrative controls, in payment for merchandise or services, and the difference between the amount of the purchase and the amount of the tendered instrument refunded in cash.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1248, § 4202; Pub. L. 86–109, § 1, July 28, 1959, 73 Stat. 258; Pub. L. 94–581, title II, § 210(d), Oct. 21, 1976, 90 Stat. 2864; Pub. L. 97–295, § 4(88), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 99–576, title VII, § 702(13), Oct. 28, 1986, 100 Stat. 3302; renumbered § 7802 and amended Pub. L. 102–40, title IV, § 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, § 14(e)(7), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 108–170, title III, § 304, Dec. 6, 2003, 117 Stat. 2058; Pub. L. 111–350, § 5(j)(5), Jan. 4, 2011, 124 Stat. 3850.)

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–350 substituted “section 6101(b) to (d) of title 41” for “section 3709 of the Revised Statutes (41 U.S.C. 5)”.

2003—Pub. L. 108–170 struck out introductory provisions which read “The Secretary shall—”, substituted period for semicolon at end of pars. (1) to (10), inserted last two sentences in par. (5), redesignated pars. (1) to (11) as subsecs. (a) to (k), respectively, and realigned margins, inserted headings in subsecs. (a) to (k), and inserted “The Secretary shall” after heading in subsecs. (a) to (g) and (i) and “The Secretary may” after heading in subsecs. (h), (j), and (k).

1991—Pub. L. 102–83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in section catchline and in introductory provisions.

Pub. L. 102–40, § 402(a), (b)(1), renumbered section 4202 of this title as this section.

Par. (1). Pub. L. 102–83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in two places.

Par. (3). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102–83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pars. (4), (5). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Par. (6). Pub. L. 102–54 amended par. (6) as in effect immediately before the enactment of Pub. L. 102–40 by substituting “section 3709 of the Revised Statutes (41 U.S.C. 5)” for “section 5 of title 41”.

Pars. (9), (10). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Par. (11). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102–83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102–40, § 402(d)(1), substituted “7803” for “4203”.

1986—Par. (11). Pub. L. 99–576 struck out “and without regard to the provisions of section 1 of the Act of January 31, 1925 (7 U.S.C. 2217), and section 1 (1st proviso under heading ‘OFFICE OF THE SECRETARY’) of the Act of May 11, 1922 (7 U.S.C. 2240),” after “as the Administrator may deem appropriate.”

1982—Par. (5). Pub. L. 97–295, § 4(88)(A), substituted reference to provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5 for reference to the civil-service laws and the Classification Act of 1949, and substituted provision that the relevant employees are subject to the provisions of title 5 relating to a preference eligible described in section 2108(3) of title 5, subchapter I of chapter 81 of title 5, and subchapter III of chapter 83 of title 5 for provision that such employees were subject to the Veterans’ Preference Act of 1944, the Civil Service Retirement Act, and laws administered by the Bureau of Employees’ Compensation applicable to civilian employees of the United States.

Par. (11). Pub. L. 97–295, § 4(88)(B), substituted “section 1 of the Act of January 31, 1925 (7 U.S.C. 2217), and section 1 (1st proviso under heading ‘OFFICE OF THE SECRETARY’) of the Act of May 11, 1922 (7 U.S.C. 2240)” for “sections 521 and 543 of title 5”.

1976—Pars. (3), (9), (10), (11). Pub. L. 94–581 substituted “the Administrator” for “he” in pars. (3), (9), (10), and (11).

1959—Par. (3). Pub. L. 86–109 required the Service to pay reasonable charges, as determined by the Administrator, for the use of space, buildings, and structures furnished by the Veterans’ Administration and authorized reduction of waiver of the charges when payment thereof would impair the working capital required by the Service.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–581 effective Oct. 21, 1976, see section 211 of Pub. L. 94–581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–109 provided that: “This Act [amending this section] shall take effect on the first day of July 1959.”

§ 7803. Operation of Service

(a) **PRIMARY BENEFICIARIES.**—Canteens operated by the Service shall be primarily for the use and benefit of—

(1) veterans hospitalized or domiciled at the facilities at which canteen services are provided; and

(2) other veterans who are enrolled under section 1705 of this title.

(b) **OTHER AUTHORIZED USERS.**—Service at such canteens may also be furnished to—

- (1) personnel of the Department and recognized veterans' organizations who are employed at a facility at which canteen services are provided and to other persons so employed;
- (2) the families of persons referred to in paragraph (1) who reside at the facility; and
- (3) relatives and other persons while visiting a person specified in this section.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1249, § 4203; renumbered § 7803 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 106-117, title III, § 302, Nov. 30, 1999, 113 Stat. 1572; Pub. L. 108-422, title VI, § 603, Nov. 30, 2004, 118 Stat. 2397.)

AMENDMENTS

2004—Pub. L. 108-422 amended text of section generally. Prior to amendment, text read as follows: "The canteens at hospitals and homes of the Department shall be primarily for the use and benefit of veterans hospitalized or domiciled at such hospitals and homes. Service at such canteens may also be furnished to personnel of the Department and recognized veterans' organizations employed at such hospitals and homes and to other persons so employed, to the families of all the foregoing persons who reside at the hospital or home concerned, and to relatives and other persons while visiting any of the persons named in this section."

1999—Pub. L. 106-117 struck out subsec. (a) designation and substituted "in this section" for "in this subsection; however, service to any person not hospitalized, domiciled, or residing at the hospital or home shall be limited to the sale of merchandise or services for consumption or use on the premises" and struck out subsec. (b) which read as follows: "Service at canteens other than those established at hospitals and homes shall be limited to sales of merchandise and services for consumption or use on the premises, to personnel employed at such establishments, their visitors, and other persons at such establishments on official business."

1991—Pub. L. 102-40 renumbered section 4203 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places.

§ 7804. Financing of Service

To finance the establishment, maintenance, and operation of the Service there is hereby authorized to be appropriated, from time to time, such amounts as are necessary to provide for (1) the acquisition of necessary furniture, furnishings, fixtures, and equipment for the establishment, maintenance, and operation of canteens, warehouses, and storage depots; (2) stocks of merchandise and supplies for canteens and reserve stocks of same in warehouses and storage depots; (3) salaries, wages, and expenses of all employees; (4) administrative and operation expenses; and (5) adequate working capital for each canteen and for the Service as a whole. Amounts appropriated under the authority contained in this chapter and all income from canteen operations become and will be administered as a revolving fund to effectuate the provisions of this chapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1250, § 4204; Pub. L. 92-310, title II, § 209, June 6, 1972, 86 Stat. 204; Pub. L. 99-576, title VII, § 702(14), Oct. 28, 1986, 100 Stat. 3302; renumbered § 7804 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4204 of this title as this section.

1986—Pub. L. 99-576 struck out ", amounts heretofore appropriated to carry out Public Law 636, Seventy-ninth Congress," before "and all income".

1972—Pub. L. 92-310 struck out "and premiums on fidelity bonds of employees" in cl. (4).

§ 7805. Revolving fund

The revolving fund shall be deposited in a checking account with the Treasury of the United States. Such amounts thereof as the Secretary may determine to be necessary to establish and maintain operating accounts for the various canteens may be deposited in checking accounts or other interest-bearing accounts in other depositories selected by the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1250, § 4205; Pub. L. 100-322, title IV, § 414(a)(1), May 20, 1988, 102 Stat. 549; renumbered § 7805 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4205 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

1988—Pub. L. 100-322 inserted "or other interest-bearing accounts" after "checking accounts".

§ 7806. Budget of Service

The Service shall prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, which shall contain an estimate of the needs of the Service for the ensuing fiscal year including an estimate of the amount required to restore any impairment of the revolving fund resulting from operations of the current fiscal year.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1250, § 4206; Pub. L. 97-258, § 3(k)(8), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 100-322, title IV, § 414(a)(2), May 20, 1988, 102 Stat. 549; renumbered § 7806 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4206 of this title as this section.

1988—Pub. L. 100-322 struck out at end "Any balance in the revolving fund at the close of the fiscal year in excess of the estimated requirements for the ensuing fiscal year shall be covered into the Treasury as miscellaneous receipts."

1982—Pub. L. 97-258 substituted "corporations by chapter 91 of title 31," for "corporations by sections 841-869 of title 31,".

§ 7807. Audit of accounts

The Service shall maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of chapter 35 of title 31.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1250, § 4207; Pub. L. 93-604, title VII, § 704, Jan. 2, 1975, 88 Stat. 1964; Pub. L. 97-295, § 4(89), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 97-452, § 2(e)(3), Jan. 12, 1983, 96 Stat. 1312.)

Stat. 2479; renumbered § 7807 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4207 of this title as this section.

1983—Pub. L. 97-452 substituted “chapter 35 of title 31” for “section 3523 of title 31”.

1982—Pub. L. 97-295 substituted “section 3523 of title 31” for “the Accounting and Auditing Act of 1950”.

1975—Pub. L. 93-604 substituted provisions that the Service maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950 for provisions that the Service maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by sections 841-869 of Title 31 and that no other audit shall be required.

§ 7808. Service to be independent unit

It is the purpose of this chapter that, under control and supervision of the Secretary, the Service shall function as an independent unit in the Department and shall have exclusive control over all its activities including sales, procurement and supply, finance, including disbursements, and personnel management, except as otherwise provided in this chapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1250, § 4208; Pub. L. 97-295, § 4(90), Oct. 12, 1982, 96 Stat. 1312; renumbered § 7808 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4208 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Department” for “Veterans’ Administration”.

1982—Pub. L. 97-295 substituted “provided in this chapter” for “herein provided”.

§ 7809. Child-care centers

(a)(1) The Secretary, through the Service, shall provide for the operation of child-care centers at Department facilities in accordance with this section. The operation of such centers shall be carried out to the extent that the Secretary determines, based on the demand for the care involved, that such operation is in the best interest of the Department and that is practicable to do so. The centers shall be available for the children of Department employees and, to the extent space is available, the children of other employees of the Federal Government and the children of employees of affiliated schools and corporations created under section 7361 of this title.

(2) There shall be in the Service an official who is responsible for all matters relating to the provision of child-care services under the authority of this section.

(b) The Service shall establish reasonable charges for child-care services provided at each child-care center operated under this section. The charges shall be subject to the approval of the Secretary. In the case of a center operated directly by the Service, the charges with respect

to the center shall be sufficient to provide for the operating expenses of the center, including the expenses of personnel assigned to the center. In the case of a center operated by a contractor which is a for-profit entity, the charges shall be established by taking into consideration the value of the space and services furnished with respect to the center under subsection (c)(1) of this section.

(c) In connection with the establishment and operation of any child-care center under this section, the Secretary—

(1) shall furnish, at no cost to the center, space in existing Department facilities and utilities, custodial services, and other services and amenities necessary (as determined by the Secretary) for the health and safety of the children provided care at the center;

(2) may, on a reimbursable basis, convert space furnished under clause (1) of this subsection for use as the child-care center and provide other items necessary for the operation of the center, including furniture, office machines and equipment, and telephone service, except that the Secretary may furnish basic telephone service and surplus furniture and equipment without reimbursement;

(3) shall provide for the participation (directly or through a parent advisory committee) of parents of children receiving care in the center in the establishment of policies to govern the operation of the center and in the oversight of the implementation of such policies;

(4) shall require the development and use of a process for determining the fitness and suitability of prospective employees of or volunteers at the center; and

(5) shall require in connection with the operation of the center compliance with all State and local laws, ordinances, and regulations relating to health and safety and the operation of child-care centers.

(d) The Secretary shall prescribe regulations to carry out this section.

(e) For the purpose of this section, the term “parent advisory committee” means a committee comprised of, and selected by, the parents of children receiving care in a child-care center operated under this section.

(Added Pub. L. 100-322, title IV, § 412(a), May 20, 1988, 102 Stat. 547, § 4209; renumbered § 7809 and amended Pub. L. 102-40, title IV, § 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(e)(8), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(a), (b)(1), renumbered section 4209 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Pub. L. 102-54 amended subsec. (a)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “child-care” for “child care”.

Pub. L. 102-40, § 402(d)(1), substituted “7361” for “4161”.

Subsec. (a)(2). Pub. L. 102-54 amended subsec. (a)(2) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in pars. (1) and (2).

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in par. (1).

Pub. L. 102-54 amended subsec. (c) as in effect before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care" in introductory provisions and in par. (2).

Subsec. (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (e). Pub. L. 102-54 amended subsec. (e) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "child-care" for "child care".

§ 7810. Exemption from personnel ceilings

Persons who are employed by the Service and compensated from the revolving fund established by section 7804 of this title may not be considered to be employees of the Department for the purposes of any personnel ceiling which may otherwise be applied to employees of the Department by the President or an official of the executive branch.

(Added Pub. L. 100-322, title IV, §414(b)(1), May 20, 1988, 102 Stat. 549, §4210; renumbered §7810 and amended Pub. L. 102-40, title IV, §402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

AMENDMENTS

1991—Pub. L. 102-40, §402(a), (b)(1), renumbered section 4210 of this title as this section.

Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-40, §402(d)(1), substituted "7804" for "4204".

CHAPTER 79—INFORMATION SECURITY EDUCATION ASSISTANCE PROGRAM

Sec.	
7901.	Programs; purpose.
7902.	Scholarship program.
7903.	Education debt reduction program.
7904.	Preferences in awarding financial assistance.
7905.	Requirement of honorable discharge for veterans receiving assistance.
7906.	Regulations.
7907.	Termination.

§ 7901. Programs; purpose

(a) IN GENERAL.—To encourage the recruitment and retention of Department personnel who have the information security skills necessary to meet Department requirements, the Secretary may carry out programs in accordance with this chapter to provide financial support for education in computer science and electrical and computer engineering at accredited institutions of higher education.

(b) TYPES OF PROGRAMS.—The programs authorized under this chapter are as follows:

(1) Scholarships for pursuit of doctoral degrees in computer science and electrical and computer engineering at accredited institutions of higher education.

(2) Education debt reduction for Department personnel who hold doctoral degrees in com-

puter science and electrical and computer engineering at accredited institutions of higher education.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3460.)

§ 7902. Scholarship program

(a) AUTHORITY.—(1) Subject to the availability of appropriations, the Secretary may establish a scholarship program under which the Secretary shall, subject to subsection (d), provide financial assistance in accordance with this section to a qualified person—

(A) who is pursuing a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education; and

(B) who enters into an agreement with the Secretary as described in subsection (b).

(2)(A) Except as provided in subparagraph (B), the Secretary may provide financial assistance under this section to an individual for up to five years.

(B) The Secretary may waive the limitation under subparagraph (A) if the Secretary determines that such a waiver is appropriate.

(b) SERVICE AGREEMENT FOR SCHOLARSHIP RECIPIENTS.—(1) To receive financial assistance under this section an individual shall enter into an agreement to accept and continue employment in the Department for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary as being appropriate to obtain adequate service in exchange for the financial assistance and otherwise to achieve the goals set forth in section 7901(a) of this title. In no event may the period of service required of a recipient be less than the period equal to the total period of pursuit of a degree for which the Secretary agrees to provide the recipient with financial assistance under this section. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be.

(3) An agreement entered into under this section by a person pursuing a doctoral degree shall include terms that provide the following:

(A) That the period of obligated service begins on a date after the award of the degree that is determined under the regulations prescribed under section 7906 of this title.

(B) That the individual will maintain satisfactory academic progress, as determined in accordance with those regulations, and that failure to maintain such progress constitutes grounds for termination of the financial assistance for the individual under this section.

(C) Any other terms and conditions that the Secretary determines appropriate for carrying out this section.

(c) AMOUNT OF ASSISTANCE.—(1) The amount of the financial assistance provided for an individual under this section shall be the amount determined by the Secretary as being necessary to pay—

(A) the tuition and fees of the individual; and

(B) \$1,500 to the individual each month (including a month between academic semesters or terms leading to the degree for which such assistance is provided or during which the individual is not enrolled in a course of education but is pursuing independent research leading to such degree) for books, laboratory expenses, and expenses of room and board.

(2) In no case may the amount of assistance provided for an individual under this section for an academic year exceed \$50,000.

(3) In no case may the total amount of assistance provided for an individual under this section exceed \$200,000.

(4) Notwithstanding any other provision of law, financial assistance paid an individual under this section shall not be considered as income or resources in determining eligibility for, or the amount of benefits under, any Federal or federally assisted program.

(d) REPAYMENT FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) An individual who receives financial assistance under this section shall repay to the Secretary an amount equal to the unearned portion of the financial assistance if the individual fails to satisfy the requirements of the service agreement entered into under subsection (b), except in circumstances authorized by the Secretary.

(2) The Secretary may establish, by regulations, procedures for determining the amount of the repayment required under this subsection and the circumstances under which an exception to the required repayment may be granted.

(3) An obligation to repay the Secretary under this subsection is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after the date of the termination of the agreement or contract on which the debt is based.

(e) WAIVER OR SUSPENSION OF COMPLIANCE.—The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of an individual for service or payment under this section (or an agreement under this section) whenever noncompliance by the individual is due to circumstances beyond the control of the individual or whenever the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

(f) INTERNSHIPS.—(1) The Secretary may offer a compensated internship to an individual for whom financial assistance is provided under this section during a period between academic semesters or terms leading to the degree for which such assistance is provided. Compensation provided for such an internship shall be in addition to the financial assistance provided under this section.

(2) An internship under this subsection shall not be counted toward satisfying a period of obligated service under this section.

(g) INELIGIBILITY OF INDIVIDUALS RECEIVING MONTGOMERY GI BILL EDUCATION ASSISTANCE PAYMENTS.—An individual who receives a payment of educational assistance under chapter 30,

31, 32, 34, or 35 of this title or chapter 1606 or 1607 of title 10 for a month in which the individual is enrolled in a course of education leading to a doctoral degree in information security is not eligible to receive financial assistance under this section for that month.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3460.)

EFFECTIVE DATE

Pub. L. 109-461, title IX, §903(c), Dec. 22, 2006, 120 Stat. 3464, provided that: "Section 7902 of title 38, United States Code, as added by subsection (a), may only apply with respect to financial assistance provided for an academic semester or term that begins on or after August 1, 2007."

§ 7903. Education debt reduction program

(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary may establish an education debt reduction program under which the Secretary shall make education debt reduction payments under this section to qualified individuals eligible under subsection (b) for the purpose of reimbursing such individuals for payments by such individuals of principal and interest on loans described in paragraph (3) of that subsection.

(b) ELIGIBILITY.—An individual is eligible to participate in the program under this section if the individual—

(1) has completed a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education during the five-year period preceding the date on which the individual is hired;

(2) is an employee of the Department who serves in a position related to information security (as determined by the Secretary); and

(3) owes any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education.

(c) AMOUNT OF ASSISTANCE.—(1) Subject to paragraph (2), the amount of education debt reduction payments made to an individual under this section may not exceed \$82,500 over a total of five years, of which not more than \$16,500 of such payments may be made in each year.

(2) The total amount payable to an individual under this section for any year may not exceed the amount of the principal and interest on loans referred to in subsection (b)(3) that is paid by the individual during such year.

(d) PAYMENTS.—(1) The Secretary shall make education debt reduction payments under this section on an annual basis.

(2) The Secretary shall make such a payment—

(A) on the last day of the one-year period beginning on the date on which the individual is accepted into the program established under subsection (a); or

(B) in the case of an individual who received a payment under this section for the preceding fiscal year, on the last day of the one-year period beginning on the date on which the individual last received such a payment.

(3) Notwithstanding any other provision of law, education debt reduction payments under this section shall not be considered as income or resources in determining eligibility for, or the amount of benefits under, any Federal or federally assisted program.

(e) **PERFORMANCE REQUIREMENT.**—The Secretary may make education debt reduction payments to an individual under this section for a year only if the Secretary determines that the individual maintained an acceptable level of performance in the position or positions served by the individual during the year.

(f) **NOTIFICATION OF TERMS OF PROVISION OF PAYMENTS.**—The Secretary shall provide to an individual who receives a payment under this section notice in writing of the terms and conditions that apply to such a payment.

(g) **COVERED COSTS.**—For purposes of subsection (b)(3), costs relating to a course of education or training include—

- (1) tuition expenses; and
- (2) all other reasonable educational expenses, including fees, books, and laboratory expenses.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3462; amended Pub. L. 111-275, title X, §1001(o), Oct. 13, 2010, 124 Stat. 2897.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-275 substituted “paragraph (3)” for “paragraph (2)”.

§ 7904. Preferences in awarding financial assistance

In awarding financial assistance under this chapter, the Secretary shall give a preference to qualified individuals who are otherwise eligible to receive the financial assistance in the following order of priority:

- (1) Veterans with service-connected disabilities.
- (2) Veterans.
- (3) Persons described in section 4215(a)(1)(B) of this title.
- (4) Individuals who received or are pursuing degrees at institutions designated by the National Security Agency as Centers of Academic Excellence in Information Assurance Education.
- (5) Citizens of the United States.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3463.)

§ 7905. Requirement of honorable discharge for veterans receiving assistance

No veteran shall receive financial assistance under this chapter unless the veteran was discharged from the Armed Forces under honorable conditions.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

§ 7906. Regulations

The Secretary shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

§ 7907. Termination

The authority of the Secretary to make a payment under this chapter shall terminate on July 31, 2017.

(Added Pub. L. 109-461, title IX, §903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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AMENDMENTS

1991—Pub. L. 102-86, title IV, §401(b)(2), Aug. 14, 1991, 105 Stat. 422, inserted “; Enhanced-Use Leases of Real Property” in item for chapter 81.

Pub. L. 102-40, title IV, §402(c)(2), May 7, 1991, 105 Stat. 239, substituted “8101” for “5001” in item for chapter 81, “8201” for “5070” in item for chapter 82, “8301” for “5101” in item for chapter 83, and “8501” for “5201” in item for chapter 85.

1972—Pub. L. 92-541, §2(b), Oct. 24, 1972, 86 Stat. 1107, added item for chapter 82.

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

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